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**OBSERVATIONS**

ON

**THE PERNICIOUS PRACTICE**

OF THE

**LAW.**

AS PUBLISHED OCCASIONALLY IN THE INDEPENDENT CHRONICLE,  
IN THE YEAR 1786, AND REPUBLISHED AT THE REQUEST  
OF A NUMBER OF RESPECTABLE CITIZENS.

WITH AN

ADDRESS NEVER BEFORE PUBLISHED.

==  
**BY HONESTUS.**  
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“Cicero insisted on the moral rectitude of a Lawyer, and asserted that every thing depended on his probity and adherence to the principles of justice.”

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# OBSERVATIONS, &c.

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## No. I.

“When will Benevolence the lawyer warm?  
Or when plain Honesty the courtier charm?  
How flames my blood, indignant at the thought,  
That laws are barter’d; traffic’d passions bought!  
That men no more the soft sensation feel,  
And gold, curs’d gold, the bosom turns to steel.”

THE following observations are meant, in general, to apply to the practitioners of the law as an “order” of men, and not intended to reflect on them in their particular character, as many individuals among them are gentlemen of high esteem and confidence. But it has lately been asserted, by a person under the signature of a “Free Republican,” in our public papers, that they are a “necessary order in a republic.” It is presumed the subject is open to inquiry, and consequently there can be no objection in applying the general practice to support a contrary hypothesis.

Among the multiplicity of evils which we at present suffer, there are none more justly complained of than those we labour under by the many pernicious practices in the profession of the law. It has, therefore, become a subject of serious inquiry, whether this body of men, in a young republic, are a “necessary order.”

Laws are necessary for the safety and good order of society, and consequently the execution of them is of great importance to be attended to. When, therefore, *finesse* and gross impositions are practised, and under sanction of the law, every principle of equity and justice is destroyed, the persons concerned in such pernicious measures ought to be brought forward, and their conduct arraigned before the impartial tribunal of the people.

The study and practice of the law are doubtless an honourable employ; and when a man acts becoming the dignity of the profession, he ought to be esteemed by every member in the community. But when any number of men under sanction of this character are endeavouring to perplex and embarrass every judi-



cial proceeding, who are rendering intricate even the most simple principles of law, who are involving individuals, applying for advice, in the most distressing difficulties, who are practising the greatest art in order to delay every process, who are taking the advantage of every accidental circumstance which an unprincipled person might have, by the lenity and indulgence of an honest creditor, who stand ready to strike up a bargain, (after rendering the property in a precarious state,) to throw an honest man out of three quarters of his property. When such men pretend to cloak themselves under the sacredness of law, it is full time the people should inquire, "by what authority they do these things."

Within a few years past, the greatest impositions have been practised by many of this "order." Has it not become a matter of general complaint? If so, why should the community be hampered with such evils without endeavouring in some manner to remedy them? As practitioners of the law, are they to be indulged with the privilege of involving every individual in ruin who appeals to the laws of his country? It is the peculiar right of a freeman to be secure in his property and person; but by the present general mode of conduct, are we not deprived the security of both? To what purpose are laws without a due execution? Or why should we boast of our liberties, if we are deprived the power of freeing ourselves from injuries?

The distresses of the people are now great, but if we examine particularly, we shall find them owing, in a great measure, to the conduct of some practitioners of the law. Seven-eighths of the causes which are now in their hands might have been settled by impartial *referees*. Why cannot the disputes of the merchant, &c. be adjusted by reference, rather than by a long tedious Court process? Or why should we engage lawyers who are wholly unacquainted with all mercantile concerns? Is it to swell the costs, and then by a rule of Court have them finally determined by referees, which is generally the case? Have not the greatest distresses taken place by this "order" of men being employed as agents for British merchants, factors, &c. and if we look through the different counties throughout the Commonwealth, we shall find that the troubles of the people arise principally from debts enormously swelled by tedious law-suits.

The many pernicious modes of judiciary process which have taken place within a few years, are too notorious to mention;



scarcely a petty office but has become a little distinct tribunal. What flagrant impositions are daily practised under sanction of law? The distressed individual is often reduced to the humiliating state of submitting to the extortion of official fees without any remedy. Is it not a disgrace to a free republic that the citizens should dread appealing to the laws of their country? To what purpose have we laws? Or with what propriety can we call ourselves freemen, while we suffer an "order" of men to embarrass every mode of legal proceeding?

It has, therefore, become necessary for the welfare and security of the Commonwealth, that some mode be adopted in order to render the laws a blessing, instead of an evil. For this purpose, it is requested that some acts should be passed, declaring that all cases left to reference in future, the decision of the referees should be binding on the parties. In all judiciary processes, the Judges to receive the evidence from the parties, and deliver it to the Jury, with their opinion on any controverted points of law. The Jury in this manner would be possessed of all that was necessary to determine on the cause, viz. Law and Evidence, without the false glosses and subterfuges too often practiced by lawyers.

If such regulations were made in our Courts, the Judges could determine with more precision; the Jury by taking the evidence, and points of law from the Judges, could, with more clearness, determine the cause; as in many instances a Jury becomes puzzled in their judgment by the variety of sentiments advanced by lawyers. By this method the laws would be more justly executed, as the judges are under no influence from either party, their salaries being independent. But by our present mode, the lawyers become parties by their fees, and are too apt to delay the business while there is any prospect of further profit.

I would ask, whether there is one case, that absolutely requires the assistance of this "order?" Or if they were totally silenced, whether any one inconvenience could arise? The law and evidence are all the essentials required, and are not the Judges competent for these purposes? Why then this intervening "order?"

If no practitioners were allowed in our Courts, the important study of law, would be followed solely with a view of doing justice; and gentlemen of talents, who meant to serve their country as Judges, would make the public good their chief object. They would not take up the profession as a set of needy persons, who



meant by chicanery and finesse, to get a living by their practice ; but they would make it a point of duty, so to understand the laws, as to distribute equal justice to the rich and poor ; each individual would receive the benefit of the laws, and by a speedy and impartial determination, every man would have his cause decided without the imposition of enormous Court charges, and lawyers' fees. There would be no great danger of the Judges converting their authority to any destructive purposes, "as the municipal institutions are so fixed and determined, in this Commonwealth, that it must be difficult for the Judicial Authority to trample upon them with impunity." The perplexity of our laws, therefore, are chiefly owing to the embarrassments thrown in the way by the "order" of lawyers.

It is presumed the sentiments offered will be attended to by the Legislature ; and as it is a matter of universal concern, it is earnestly wished that the people throughout the State would instruct their representatives on this interesting subject.

I would again observe, that the foregoing observations do not arise from pique or resentment to the gentlemen of the profession, as individuals ; but from a sincere regard to the interest and well being of the Commonwealth ; and as nothing but facts are mentioned, they will be maintained with confidence.

March 9, 1786.

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## No. II.

### *Some Observations on the Pernicious Practice of the Law.*

#### ADDRESSED TO THE PEOPLE.

**I**N my last, some observations were offered for the consideration of the Legislature, on the practice "of the law," as of late introduced amongst us by the "order" of lawyers. It being a matter of serious concern, I hope it will not be thought unnecessary to draw the attention of my countrymen to this interesting subject. The observations in the former piece were not intended merely for speculation, and I hope they will not be considered of such trifling moment as to be treated with indifference ; the people of this Commonwealth are too much interested in the decision, to rest



satisfied with barely hearing of the evils they suffer, without some determinate resolutions to remedy them.

The questions are, whether we will have this "order" so far established in this Commonwealth, as to rule over us ; or, whether the people of this State do think themselves free from danger, while this "order" of men are permitted to continue in their present career ? These surely are questions worthy of our attention, and ought not to be passed over without mature consideration.

If the most pernicious consequences have taken place by the conduct of the generality of this "order," why should we not make some spirited exertions, to free ourselves from them ? Are the people of this Commonwealth become so pleased with the parade of this "order" in their sable habiliments, as to wish the continuance of it ? Or are we at length become so terrified by their assuming consequence, as willingly to crouch to their controul ? Shall we be content with the humble boon of making laws, but resign the prerogative of their execution into the hands of this "order ?" Shall we who have fought to establish a government upon the basis of "peace, liberty, and safety," relinquish every privilege of freedom, and subject ourselves to continual animosities, impositions and distresses ? If we are willing to bend under the aristocratical tyranny of this "order," all the boasted acquisitions of our independence are "sounds and nothing else." For I do maintain, when a people cannot appeal with safety to the laws of their country, they are absolute slaves.

I am not led by an heated enthusiasm, as my appeal is not only to the feelings, but to the judgment of the people. That we have hitherto suffered much, not a man throughout the Commonwealth, but can attest to the melancholy truth. How many debtors now languish in prison, whose misfortunes are increased by Court impositions ? The merchant can witness the embarrassment of his appeal to the laws of his country. The landholder, tradesman, and mechanic, can relate the distresses of their families, and in many instances ruin of their estates, in consequence of perplexing law suits. It is time then for the people to begin seriously to think of the evils now existing, and to avoid those with which they are threatened ; a few years more may put it out of our power to relieve ourselves ! The disease may be too deeply rooted, to be easily eradicated. This "order" is continually becoming more and more powerful. Look into every public department, and who do we find ?



Are not individuals of this "order" exercising their influence within every important circle? Can we suppose the Republic to be free from danger, while this "order" are admitted so abundantly as members of our Legislature? Is it not contrary to every principle of propriety to admit men to make laws, who are living upon the practice of them? They surely will ever find it for their interest to make them so indefinite in their construction, as to allow of many plausible objections against them in their future practice. The constitution has forbid the Judges, State's Attorney, and others in the Judiciary department, from being members of the Legislature; why should not this "order" be equally as ineligible? As it must ever be for their benefit so to frame laws as will answer every purpose and subterfuge, in their professional line. Do we not often hear this "order" make a distinction between their opinion as members of society, and as practitioners of the law; one being their real, the other their occasional sentiments? Upon these principles, therefore, I doubt not my countrymen will in future conclude, that the "order" ought never to be admitted into our Legislature.

In the former piece some regulations were mentioned as necessary to be adopted:

1st. "That all decisions by referees should be binding on the parties." On which I beg leave to observe, that no person whatever can object to this measure. What mode can be more eligible, than for the parties to have their disputes settled by the determination of three judicious men? Who can have no sinister views, and who meet solely for an amicable settlement of the contest. If any matter can be adjusted with equity, this certainly must be the most likely method: Why are lawyers needed in this case? If this mode therefore is so perfectly equitable, why should we object against having a law passed to make such decisions binding on the parties? Possibly it may be said, that at court we can appeal from one term to another; so also in the method proposed; if the parties find any new evidence arise after their first hearing, they should have a right to a second appeal on the subject, before the same referees, and the last decision to be binding. A law of this kind to be passed, could not but be approved of by the people, as the most beneficial plan, calculated to prevent great trouble and expense. Provided this mode had formerly been adopted, how many disputed accounts, which are now in our courts, could have been settled



by three merchants who are acquainted with mercantile concerns ; whereas we have become so infatuated as to place such causes in the hands of lawyers, who in general are unacquainted with the customs of merchants, &c. and after the parties have danced through every labyrinth of the law, are at last obliged to leave their cause to a rule of court, and to have it settled by the very men who should have determined it in the first instance. Thus by our own folly we subject ourselves to the costs of court, lawyers' fees, &c. which are continually augmenting throughout every period of the controversy.—I have thought proper to instance in the case of the merchant, but is it not equally as inconsistent in a dispute between any other class in the Commonwealth ? Cannot the tradesman, the husbandman, &c. have most of their disputes settled in this manner ? If therefore a law was enacted, to make the decisions by reference binding, on the parties, the greater part of our disputes might be determined by referees.

The second observation is, That the evidence and the law should be delivered to the Jury by the Judges ;—Nothing more can be essential than the law and evidence ; I will appeal to the gentlemen of the “order,” whether by this method, the Jury could not be possessed with every necessary information. The Judges are supposed competent to decide on any points of law ; do we suppose the Judges can receive any insight from lawyers, who cannot even from their own practice, or acquired knowledge, be more acquainted with law than the Judges themselves ? Two lawyers disputing cannot alter the established principles of law, though they may by art and chicanery bewilder a Judge. They may perplex the mind, but they cannot inform the judgment. As modesty and diffidence are often attendants on real merit, some Judges though fully possessed of the principles of law, may be confounded by the sophistry of the lawyers.—I need no greater proof of the danger of the increasing influence of lawyers over the Judges, than what every day takes place at our Court of Sessions. Many times the overbearing insolence of this “order,” is derogatory to a Court of Justice. How often are a Jury hindered from coming to a speedy decision of a cause, by the labouring pleadings of the “order ?” Though the case at first might be evident to every one of the gentlemen, yet after the loquacity of a lawyer, and the shifts and turns which “he has acquired by long practice,” the subject has almost become lost in the tediousness of the controversy. The plainer the cause, the



more ingenuity is required to confound the business, and oftentimes if they cannot succeed in any other manner, they rack their invention to find some plea to have it deferred :—even notes of hand have been controverted merely by the artful fetch of obliging the possessor to prove the hand writing. After mentioning these particulars, does not our own judgment rise up to condemn this pernicious mode, and fully convince us of the fatal effects of the practice of the “order.”

But upon the plan proposed, all these difficulties would be remedied ; in the first place, most of our disputes might be decided by referees, consequently the Judges would have but a small proportion of their present trials. In those cases that require judiciary determination, each individual could appeal to the laws as the barrier of their rights and liberties ; they could lay their causes before the Judges as fathers of the people ; their evidence could be delivered in the most plain manner, either in writing or otherways ; the Judges would consider of the case with the utmost impartiality, as they could have no sinister motives to induce them to act contrary, depending on neither party for their salary. The evidence could forthwith be delivered to the Jury with the opinion of the Judges as to any point of law ; and the Jury, after receiving the whole warm from the bosoms of the Judges, (without being enveloped in the mist of lawyers sophistry) they would be able to decide with the greatest deliberation and equity. The charges of the Court could be regulated by a fee table, (which is now too much disregarded) and the people of this Commonwealth would be secured in their property, and receive the benefit of the laws, without the disgraceful impositions they are now subject to.

The “order” of lawyers, therefore, so far from being a “necessary,” are in most cases a useless body. As the laws can be better executed without them ; and as they are of late so rapidly increasing in all parts of the Commonwealth, (like Romish priests in some other countries,) it is become absolutely necessary, as we regard the welfare of the community, that the people direct their Representatives to lay before the Legislature, the present pernicious practice of this “order,” that some measure may be adopted effectually to stop them in their dangerous progress.

Is it not trying to the feelings of “Free Republicans,” to be exposed to the scoffs of any of this “order,” while they are delivering their evidence in any cause where the property and liberties of their



fellow citizens are engaged? Have not our respectable citizens sometimes been treated, in the course of their examination, with indignity?—and have they not often times been obliged to submit to the satirical retorts of a professionalist? Pray is such conduct “necessary.”

Another pernicious practice is, making bargains upon the event of the cause. How ruinous is it to a people to have an “order” of men among them, who are rendering the laws a mere business of traffic! How disgraceful is such a mode of conduct! Are the “people” of this Commonwealth reduced to so dreadful a state, as to give one quarter part of their property to secure the remainder, when they appeal to the laws of their country? Shall we nourish an “order” in the community merely to take the advantage of our distresses, and, under pretence of doing us justice, demand any proportion of our property they may think fit? In a few years we may expect their influence to be so great, that no man will be able to apply to the laws without mortgaging a certain part of his estate to a lawyer.—Our lands, farms, and every other property, will ere long be held under the tenure of this “order;” even wills, and other conveyances by which we hold our estates, may be disputed by them for a proportion of whatever they may acquire. That these things have already taken place I will not pretend to affirm, but let us look around and see the rapid fortunes accumulated by this “order;” and then let us inquire, whether the plain practice of the law could have placed them upon the pinnacle of luxury and dissipation?

“The custom of making agreements with clients, and taxing them in proportion to the nature of the cause, and the risque they run, is,” says Quintillian, “an abominable kind of traffic, fitter for pirates than for lawyers, and which even those who have but a slender love for virtue will avoid.” Nothing surely can be so detestable as for a man to set up his principles for sale. “Far from the dignity of profession be those mean and mercenary wretches, who make a trade of eloquence, and think of nothing but sordid gain.”

One reason of the pernicious practice of the law, and what gives great influence to the “order” is, that we have introduced the whole body of English laws into our Courts; why should these States be governed by British laws? Can we suppose them applicable to the circumstances of this country? Can the monarchical and aristocratical institutions of England, be consistent with the



republican principles of our constitution? Why should a young Republic be ruled by laws framed for the particular purpose of a monarchical government, or can laws which are applicable to Kings, Lords, and Commons of England, be any way consonant to the Republican establishment of this Commonwealth? We may as well adopt the laws of the Medes and Persians. A great error, therefore, lies in our want of a proper system of laws, adapted to our particular state and circumstances: the numerous precedents brought from Old English Authorities, serve to embarrass all our judiciary causes, and answer no other purpose than to increase the influence of lawyers, as from such authorities they can cull and select precedents to answer every purpose: the omnipotence of their laws can reconcile all contradictions; how absurd therefore to introduce into our young republic, the whole body of English laws?

Is it not melancholy to see such numerous volumes, brought into our Courts, arranged in formidable order, as the grand artillery to batter down every plain, rational principle of law? As we have framed our own constitution, and mean to support our Independence as a nation, why should the people of this Commonwealth, be subject to these English codes? Would it not be more for the honour and happiness of this State, to establish a system of laws of our own, dictated by the genuine principles of Republicanism, and made easy to be understood by every individual in the community? By this means we should destroy the wonderful misery of law craft, and the whole science would be adapted to the most simple understanding.

The observations offered are solely intended for the public good; I have endeavoured to deliver my sentiments as familiar as possible; any inaccuracies therefore, I hope, will be pardoned. Each individual will judge on the subject; if my principles are approved, let them be adopted with resolution, by giving instructions to our Representatives; but if we are willing to submit to the "order" and bow down under the practice, as an individual I must acquiesce in the determination of my countrymen.

I am far from abolishing any "order" wherein real learning can any way be promoted; the present practice of the law cannot come within this idea, it being no way a stimulus to promote that knowledge which can benefit society; it consists more in the sly art of sophistry, than in the genuine principles of fair and unequivocal arguments. The sentiments of the law are too generally



studied with a view to pervert them by false glosses and plausible cavils.—In short, they are too often read by this “order” with a design to warp them to their own purposes and private emolument. Provided the “order” was abolished, I do conceive the real principles of law would be more universally practiced, as they would not be so exposed to be perverted by the whims and fancies of a numerous body of a professionalists.—Men of leisure, and of real abilities, would apply themselves to the study, and would make themselves such proficient (especially if British codes were exploded) as to qualify themselves for the important station of Judges. The bench might ever be filled (as it is as present) with men who are an honour to the State for their wisdom and integrity.

March 23, 1786.

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No. III.

“An host shall soon arise in virtue’s cause,  
And triumph o’er these Scourgers of our laws.”

*On the pernicious practice of the Law.*

THE gentleman under the signature of a “Merchant” seems exceeding anxious to inform the public, that he is “no Lawyer.” How far this declaration may be considered as a compliment, is left to the “order” themselves to determine: a person would suppose that the gentlemen of this profession were in a very bad repute, if it is necessary to be so very explicit, in order to give force to the sentiments offered in their vindication. However, it is presumed that the public are governed so much by candour, as not to be influenced in their judgment, by prepossessed prejudice; arguments which are conclusive, will have their due weight, whether they are delivered by a lawyer or a merchant. The enquiry is not who is the author? but what are the arguments?

For my own part, I appeal to the impartial determinations of the public, and shall willingly resign every pretension to their indulgence the moment my sentiments are condemned by them. The Merchant candidly considers Honestus to be an “honest man,” but at the same time views him as being led “by a zeal which is kindled into a flame;” and thinks, in the warmth of his enthusiasm, he has committed a most egregious “error,” by “boldly” recommending an annihilation of the “order” of lawyers. As



the Merchant has not offered any reasons to convince Honestus of his "error;" he still persists in his sentiments, (however "bold" the declaration) that the order of lawyers ought to be abolished.

The Merchant asks, "if there is a profession on earth that has not bad men in it who disgrace and abuse it?—and instances in the clergy. I am equally as sensible as the gentleman, "that it would be illiberal to lisp a syllable against the clergy, because of the misconduct of some;" but if it could be proved that this "order," instead of promoting Godliness, were the principal cause of all the wickedness committed in the community, and as an "order" of men were in general as deserving of chastisement as the individdal mentioned by the Merchant, in this case, I should be for annihilating this order, however pious and devout a few individuals amongst them might be. But this manner of reasoning is entirely foreign to the point, and is artfully introduced to lead the public from the important consideration of the pernicious practice of the law. This finesse, however, it is hoped, will not avail them. It is below contempt to observe the variety of methods used to throw aside the principles advanced; also the pitiful art practiced by blending very unpopular sentiments under the same signature, with a view to mislead the public into a belief that the same person is author of all the extravagant pieces under the signature of Honestus. This, however, may be considered as low cunning, and much like a rogue, who, when he is pursued, will cry out *thief* in order to escape himself amidst the general bustle.

The clergy are an ornament to society; no charges can be brought against them as an "order;" therefore to introduce this respectable body to justify the continuance of the order of lawyers, is an instance of law craft too gross to effect the purpose of the authors.

Suppose we allow "that good and bad men are in all orders," will it follow, that all "orders" are necessary?—An order of clergy exist in this Commonwealth; must therefore an order of monks and friars be admitted?—An order of doctors is established, but this is no argument that we should allow of an order of quacks and mountebanks, though possibly they may sometimes administer a favourable nostrum: An order of Judges is considered "necessary" in our republic, to administer justice, explain the laws, &c. but does it follow, that the "order" of lawyers is "necessary?" especially when every day convinces us that they are prac-



using every art to delay and embarrass every appeal to the laws of the country. The gentleman therefore by saying, that "good and bad men are in all professions," does not prove, that the "order" of lawyers is "necessary," which is the matter of contest. His premises being admitted, his consequences do not follow; if his arguments prove any thing, they prove too much, which in general is reckoned as inconclusive, as though they proved nothing.

The Merchant declines engaging in the controversy, but has offered a few judicious observations, as the "ground work" on which he should consider the subject.—Though they are principles which no one would controvert, yet I do not think that they all apply to the point in question.—Every person will join with him, "that the great aim of government should be to make such laws as produce the fewest evils, and are practicable."—The plan proposed, in the former papers, I am willing should stand on this test: The "fewest evils," must arise from a decision by referees: also, by the "law and evidence being delivered to the Jury by the Judges; and the "fewest evils" must arise, by forbidding any pleas in our courts by the order of lawyers. The practicability of this plan is certainly very easy, and requires but very little exertion to accomplish it. As the Merchant has not pointed out the benefits we receive from this "order," I must still persist in my own opinion, that the "order" of lawyers, in the present state of our republic, are not only a useless, but a dangerous and destructive body; and that their annihilations become absolutely necessary.

It is incumbent on the Merchant to prove that the fewest evils are produced from the "order of lawyers," or at least he ought to have shown the real benefit of the "order to our republic, and wherein they were "necessary;" but these things he has carefully passed over, and contented himself with advancing a sentiment, without troubling himself as to the application.

The Merchant seems to dispute the right of the Legislature to annihilate the order, by saying, "That every profession is by natural right, as well as by the principles of the constitution, entitled to equal freedom and toleration." I do not suppose the Legislature has a right to controul any man in his profession, while this profession is no ways injurious to the publick: But they have a right to examine the principles upon which any "order" prac-



tice, and if they find that their profession is productive of great mischief, and that the community are injured by their conduct, or the laws by their influence are perverted; in these cases they have a right to abolish the "order." It being an incontrovertable principle, "That a nation or state has a right to every thing that can secure it from threatening danger, and to keep at a distance whatever is capable of causing its ruin!"

I am very glad to find the subject is placed upon so serious a point, as denying the right of the legislature to abolish this order.—This is a question that ought immediately to be attended to.—Does this "order" pretend to dispute the right of the government? Have they already acquired such influence, as to dispute the prerogative of the people, whether they can abolish them or not? Must we submit to their aristocratical jurisdiction, and humbly acknowledge, that it is beyond our power to controul them?—If this is our situation, our boasted independence, our republican government, in short all our fancied privileges of freedom, are as "the baseless fabric of a vision!" These considerations therefore are forcible arguments why we should immediately attend to the subject, and exercise our right; otherwise our acquiescence in their present conduct will be a tacit acknowledgement, that this order is beyond the authority of the legislature; when this is allowed, we are truly in a very melancholy state; and may heaven avert the dreaded consequences of such an acknowledgement.

The Merchant desires me to announce to the public, "the names of the bad men of this order."—This is a very disagreeable task; and as the gentleman has complimented me as being "unwilling to wound the feelings of a fellow citizen," he must excuse my declining this unwelcome declaration:—but as the Merchant is so great an advocate for the profession, it would be very agreeable if he would favour the public with the names of the good men of this order; as the list possibly would not be very lengthy, he cannot deny so small a request.

I would not be thought to depreciate the characters of those gentlemen of the "order" of lawyers, who have acted worthily amongst us—we have had, and we continue to have, some who are entitled to every respect from this country:—But I would not carry my praise so far as to insinuate, "that America depends upon this 'order' to produce the great characters our country boasts of." We have had, and still continue to have characters



equally as great, who are not of this "order"—however, when we name an Adams,\* I must beg leave to be excused from "wounding the feelings of any one" by making a comparison to their injury: As a patriot and statesman, he stands conspicuous; superior to every little art which now too generally disgraces the "order."

These are serious truths, and I doubt not the people of this state will attend to them; the plan offered it is hoped will be supported by general instructions given to the members of the next General Court, as our dependance must be on the legislature. For this purpose it is necessary that no person of the "order" be chosen either for the Senate or House. The influence a certain individual has over one branch of our Legislature, is too notorious to be unobserved.—If this person has his name on the list of a late caucus, yet the country, it is presumed, will not suffer him to be returned. In the mean time, the small squibs of party resentment will pass unnoticed, as too contemptible to draw the attention of the author, from the objects which he is determined steadily to pursue.

The sentiments advanced in former pieces have not been controverted; the writer under the signature of the "Free Republican" has not thought proper to make any reply, and as he was so very elaborate in his ten numbers, it is supposed from his silence, that he is fully convinced of the "error" of his assertion.

March 30, 1786.

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#### No. IV.

"Oh that this care might universal be,  
That all our species liv'd in harmony;  
That the wide world, out-stretch'd in moral aid.  
'The cradling arm to shelter and to shade!  
That tender transport melted every soul,  
And one warm wish presided o'er the whole!  
That all the opposing elements of life,  
The gales of rage and hurricanes of strife,  
Might cease; and waft our barks on silken sail,  
And on life's ocean one vast calm prevail!  
That mutual passions, mutual charms might lend,  
*And each to each be Neighbour, Father, Friend."*

**I** AM not opposed to the body of lawyers as individuals, but to their pernicious practice as an "order," and when an abolition of the "or-

\* The American Ambassador.



der is urged, it is not intended as a reflection upon every individual, but as a remedy to prevent the pernicious tendency of that practice which now too generally prevails throughout this Commonwealth.

Some persons with a serious countenance will ask, what can we do without them?—I answer, let us try the experiment for a few years, and if we find they are “absolutely necessary,” it is easily re-animating the “order,” and breathing into them the breath of life. Thus regenerated they may possibly (in some measure) become useful to society.

I have in former papers endeavoured to establish this principle, that the “order” of Lawyers is dangerous in our republic, if they are permitted to pursue their present practice. If any arguments had been offered to prove my position erroneous, no person in the Commonwealth would more have readily acknowledged his error. I write not from resentment, and while I can appeal to my conscience for the rectitude of my intentions, the mere puffs of individuals will ever be treated with contempt. When a hive is disturbed we must expect a great buzzing.

I would ask, if the “order” of lawyers is “necessary,” why is this general complaint? Why is the community so greatly incensed against them?—So far from having friends in consequence of their conduct, they have numberless enemies; plaintiff and defendant seem agreed in this one point to condemn their conduct. From these premises, therefore, I draw this conclusion, that a body of men, who in consequence of their practice, have made a whole community clamorous against them, cannot be beneficial, or a “necessary order” in society, because if any benefits had arisen from them, or they were found to be absolutely “necessary,” this universal complaint could not have existed.

In Courts of Justice, all persons employed who have any influence in the cause, ought to be as unbiassed as possible; judges, jury, witnesses, &c. The parties, therefore, should not be permitted to offer any thing further than what can be produced simply from the evidence. A Court acting upon such principles, must be considered as the most equitable and judicious. In this impartial arrangement, therefore, with what propriety can we introduce a person to act in the character of a lawyer? Can this man be unbiassed, who has received a large reward, to involve the case (if necessary) in as much perplexity as possible? It may be said, that the lawyer stands in the place of his client, and may say any thing in his de-



fence ; but is there not a material difference, between allowing a man to relate his own story, and employing a person who in consideration of his fee, may be influenced to pervert the general principles of law ? No “order” of men ought to be employed to speak to a cause, who are under a bias to misconstrue the laws ; and herein is the difference, between admitting a person to plead his own case, and employing a lawyer for this purpose ; as the former must relate only plain matters of fact, but the latter (provided the cause is bad) may be led to warp the laws to answer his own particular purposes. Can the poor man (who cannot pay any of this “order”) receive equal advantage with the rich, while such a body of men exist, who stand ready to speak on any subject, and like mercenary troops, can be hired to support any cause for the consideration of a large reward ? Will not the rich opponent overpower the poor man, by the greatness of his gifts to his lawyers ? This surely is permitting the existence of an “order” purposely to deprive the “majority of persons” of the benefits of the laws, and putting it in the power of the “wealthy few,” (by the assistance of this “order”) to trample on the rights and property of the community. Wherein is the necessity of establishing an “order” of men, who, by their profession, have no fixed principle, but whose sentiments are often times exposed for public sale to the highest bidder.

I will illustrate this remark by a simple case ; suppose two persons have a dispute ; each of them repairs to his lawyer ; they accordingly take up the cause on the part of the person who applies to them.—It is quite accidental on which side either of the lawyers are engaged ; they might have been on the part of their antagonist ; however, the fee rivets both to become strenuous advocates for their clients ; though without doubt in some cases they may think their employers are wholly in the wrong.—When the cause is brought into Court, one lawyer tries to intimidate, and often times abuses the evidence of the other ; instead of a fair, equitable enquiry into the subject, every little advantage is taken of each other. The parties are harrassed by constant attendance : the trial is put off under some sham pretence to another term ; and by the finesse practised, the Judges themselves are obliged to consent to the delay.—Finally, after sauntering at the heels of a lawyer from term to term, and burthened with expences, the cause is either submitted to a Rule of Court, or the richest party by bearing down the estate of the other, obtains judgment in his favor.—This is a just descrip-



tion of a law process under the auspices of the "order" of lawyers, and this is the general conduct of that "order" which some persons would wish to support ; but I hope so much wisdom still remains in this Commonwealth, that although we have hitherto been infatuated into a submission to their numberless impositions, yet we shall soon discover the deception of their being either a "necessary" or useful "order" in our Republic :—but on the contrary, an order who embarrass rather than explain the laws, and who live in affluence upon the distresses of the community.

These considerations make me strenuous for the regulation of the present mode of practice ; and I might still urge the propriety of that plan proposed in the former papers, that the evidence be delivered to the jury, and the points of law be explained by the Judges, without the intervention of lawyers. In free governments all appeals to the laws should be on the plainest principles possible :—By this method, the poor man stands on an equality with his wealthy neighbour ; and every individual would receive equal benefit from the laws, without any tedious delays. If this simple mode was adopted, the dishonest would not dare to take the advantage of the honest, as they could not have any person within the Court to plead in their favor. The quibbles of law would not be so often urged. The paltry litigious causes amongst neighbours would not exist : harmony and benevolence would more generally prevail, and agreeable to my motto,

"Mutual passions, mutual charms might lend,  
And each to each be neighbour, father, friend."

Our Courts would become places of justice, as we should have no "order" to prevent the execution of it, and every individual would apply to the Judges with confidence becoming freemen.

Some persons have a wonderful opinion of this "order," as being necessary to explain the misteries of the law.—In the first place, the greatest part of those misteries are owing to the existence of this "order." The variety of sophistry introduced by these men, is the principal cause of the intricacy of our laws ; any man of common abilities can easily distinguish between right and wrong (a trial by Jury is on this principle) more especially when the parties are admitted to give a plain story, without any assistance from lawyers ? I dare appeal to any man who has been on a Jury, whether the greatest puzzle did not arise from the tedious loquacity of the lawyers ? The most simple case can be made intricate by a person who



is rewarded for this purpose. Is it not as common to employ a lawyer for his art and cunning, as for his knowledge in the law? and do we not as often find him succeed by the former, as by the latter? For this deception the lawyers are crying up the intricacy of the law; and by hard words, in all their judiciary proceedings, they deceive the people, (like Romish priest in matters of religion) by vehemently asserting, that without the existence of this "order" the laws could not be executed. This however is a mere dogma of law craft; from which good Lord deliver us.

The manner of employing these persons must show the impropriety and fatal tendency of such an "order" practising in a Court of Justice; sometimes half a dozen are employed or retained on one side; and a wealthy man may silence a whole bar. If then we allow this "order" to be "necessary," does not such practice deprive a poor man of every necessary mean to obtain his plea?

The candor of the "Merchant" in his last performance seems wholly to have left him. He says, "Honestus has refuted himself, because he allows my principles to be incontrovertable." It is true they were so, but then the application of them to the point in question, is what I object to. If the "Merchant" had said, It was light when the sun shined, I should not have controverted this principle, but might have objected as to its application respecting the "order" of lawyers.

The Merchant is greatly afraid, that we shall not have Judges learned in the law, if we abolish this "order"—Quibbles of law (which only arise from perverse practice) are not necessary to a Judge; the fundamental principles are only required, and provided our codes were simplified, gentlemen of leisure and abilities would qualify themselves fully for this important station.

As to his "2700 references and as many suppers," they are too contemptible to be noticed. "The 900 actions entered on one docket" are not doubted, and are melancholy proofs of the danger arising to the Commonwealth from that "order" whose existence depends on this public distress.

One remark is almost too gross too be attended to; he says, "By abolishing this learned profession, which embraces more extensive branches of science than any other, education would go out of fashion." Preposterous! Pray how is society benefited by an "order," which the whole community are condemning with one voice?—By the practice of this "order" real learning is banished



in a great measure ; and finess, sophistry, &c. take the place ! religion is not served ; our laws are not more duly executed : our commerce is not enlarged ; our agriculture is not improved ; or our manufactures encouraged, by the existence of this body. These are the fundamentals of our republic, and a due attention to them will ever keep beneficial “ education in fashion.” Law craft is not necessary for this purpose.

I shall decline the “ tete a tete” proposed by the merchant, as it can be of little service to the public that we agree in sentiments.

Great stress is laid by the “ order,” on the constitution, which provides, “ That every person shall be heard by himself, or by his council ;” and from this they infer that the Legislature has not power to abolish them.—The right of council does not interfere with the prerogative of the Legislature to regulate their conduct :—if a person does not chose to give his evidence personally, or in writing to the Court, but will employ council, the Legislature has a right to determine whether a person is eligible, who has received a bribe from his employer, as in a Court of Justice all monies paid by the parties to those who can influence the cause, must be considered as a bribe, given with a view to obtain that which the law will not grant.—Every man is entitled to a trial by jury ; but then we all know, that in many cases a Juryman is not qualified, and cannot be eligible if he has received a reward from the parties.—If therefore a man chuses to employ any friend as an advocate to plead his cause, the person thus employed should declare on oath, that he has not (directly or indirectly) received any reward, neither expects to receive any from the party for whom he is engaged.—This council may be allowed a small established fee from the Court, similar to a Juryman, and if he is found to receive any more, he should on information be subject to a most heavy penalty.—I should chuse to fix the fees so small, as not to encourage a body of men to pursue the business of advocates, merely for the profit :—this mode of conduct with respect to council, must be eligible, as it comports with the constitution, and at the same time secures the laws against that horrid perversion which they are now subject to, by the present combined practice of the “ order.”—The privilege of council, and the present practice of lawyers would then be very different in their establishment and consequences.

Denying the power of the Legislature to abolish this “ order,” is a matter of consideration ; we all complain of excessive grievances



which arise from this body, and yet we are told, that is beyond our "power" to remedy ourselves. Is not this a paradox in a free government? For what purpose have we fought for independence? Why do we boast of our freedom, if this "order" can riot on our property, by excessive charges, with impunity? And to increase the wickedness, dare tell us in our public prints, that they are superior to our controul.

It is curious to observe the plea often urged, "that the weak and simple would be over-matched and out-witted by the artful and cunning man," if the "order" of lawyers was abolished. But I maintain, that these advantages take place principally by the existence of this "order."—"An artful and cunning man," aided by "an artful and cunning" lawyer, would ever get the advantage of the "weak and simple." It will be answered, such persons must get a lawyer equally as "cunning" as his antagonist. In consequence of this, every action that comes into a Court of Justice, instead of resting on the fair principles of law, must depend for its success on the art and cunning of the lawyers. Judge and Jury must set for hours to hear two artful, cunning men dispute. Excellent situation for a young republic! Is this the manner in which our laws are to be executed? Shall the success of our appeals to the laws of our country (which ought to be as pure as possible) depend on low "cunning?" Shall the inhabitants of this Commonwealth obtain justice, by setting one "artful cunning" lawyer to oppose the chicanery of another? Besides, a wealthy man may employ, or retain all the "cunning" men of the "order," and then what is to become of the "weak and simple" (if poor) when his antagonist is assisted by such a formidably combination? In this case, the "weak, simple" and poor must become a sacrifice, even while appealing to the justice of their country. This argument, therefore, like all others I have yet heard, is quite trifling, and upon this principle, which they think is uncontrovertible in their favour, I am willing to support my position, that the "order" of lawyers is dangerous in our republic: no "order" should exist in any society, whereby the "artful and cunning" should be assisted by others as bad as themselves, but every man should be on a par, by relating his own story, either personally or in writing, which the "lame, blind, and deaf" might do. The Judges would candidly distinguish the false colouring of the rogue, and pay due attention to the diffidence of the honest man. In short, if there is any chance for the



“weak and simple” man, it must be in a Court, where the “artful and cunning” can have no assistance from this “order.”

I hope my countrymen will not be led away from the essential point, of checking the pernicious practice of the law, by some *specific* regulation of the “order” of lawyers. It is a matter of universal concern, and as we regard the happiness and welfare of our country, it is hoped the next General Court will be fully authorized to consider of this important subject.

Now is the day of our political salvation.—Let us immediately attend to the weighty concern, and so arrange our laws, that freemen shall no longer consider an appeal to them as their greatest grievance ; which to our disgrace be it spoken, is now our unhappy situation in many instances.

*April 13, 1786*

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No. V.

“ Oh! When will justice ope her slumb’ring eyes,  
And privilege on daring pinions rise?  
When will the Legislature those invest  
With robes of power, whose equity of breast  
Mark them for Beings, form’d by Heav’ns design,  
To plead our laws and in our Courts to shine?  
The sacred rights of property secure,  
And render every tenure safe and sure?  
Since train’d to Trade, th’ Attorney——  
With fraudulent fingers weaves the web of law,  
And frowns his trembliug minions into Awe ”

As some judiciary mode seems necessary to be adopted, to remedy the evils we now suffer, I must request the attention of the public to the mode proposed in former papers.—The author has no other motive, than to urge those who are more acquainted with the general principles of jurisprudence to offer their sentiments on the subject. It is not doubted the plan will be treated with candour, as the writer has no sinister views to answer ; having as little to fear from the continuence of the “order,” or to hope from its abolition, as any individual in the State.—

The mode is as follows —



1st. That whenever parties agree to leave their disputes to reference, the decision of the referees (if unanimous) to become binding on them ; and in case any new evidence arises, the parties to be entitled to a second hearing before the same referees.

2d. That instead of the numerous codes of British laws, which are now introduced into our Courts, we should adopt a plain concise system, calculated upon the plainest principles, and agreeably to our Republican government.—This would render useless hundreds of volumes, which only serve to make the practice mysterious.

3d. That in all civil cases brought into Court, the parties should offer their pleas personally, or in writing, without the intervention of the “order” of lawyers.—The evidence to be delivered to the Court, and the Judges to recite the whole to the Jury, with every explanation of the law, necessary to regulate them in their decision.

4th. As by the Constitution, every man has the privilege of being heard by his council, in conformity to which, those persons who do not choose to make their plea in person or writing, should be heard by any friend they choose to employ ; and that this person should not be biassed to mislead the Court or Jury (by previous fees) he should first declare upon oath, that he had not received, and that he did not expect to receive any reward from the parties for his services.—A small established fee should be allowed all such advocates, from the Court, as a compensation for their time and trouble : but if this person should receive any reward from the parties, on information, he should be subject to a very heavy penalty, and rendered unfit for any employ in government.—The fees should be so small as not to encourage an “order” of men to pursue this business merely for the profit ; as we should rather encourage every person (who has no particular hindrance) to give his plea in person or writing ; this establishment would be very different from the present “order” of lawyers.

5th. As we have an Attorney-General who acts in behalf of the State, it is proposed that the Legislature appoint another person (with a fixed salary) as Advocate-General for all persons arraigned on criminal prosecutions ; whose business should be to appear in behalf of all prisoners indicted by the State’s Attorney.

Provided the foregoing mode was adopted I would ask, whether the inhabitants of this Commonwealth, would not receive greater benefits from the laws, than they now do, according to the general mode of practice, without the impositions, embarrassments, and ex-



pences, which attend our most simple trials?—By this plan our causes would be more expeditiously determined, as there would be no “order” whose interest it was to perplex and delay : each man’s plea would be impartially considered by the Judges, and delivered pure without any subtilty to the Jury.—I dare appeal to any man, whether he had not rather trust his cause upon the determination of a Court established upon these principles, than to the long, tedious process we are now subject to ?—So far from disorder and anarchy taking place from this mode, all our appeals to the laws would be decided with the utmost impartiality, order, and rectitude ; no law-craft would be exercised, as it would be no advantage for any in Court, to embarrass or perplex the cause ; candour and decision must of consequence ensue.

We have too long connected the idea of law and “order” of lawyers ; and some are apt to think, if we destroy the latter, the former must of consequence follow ; but as a friend to their due executions, I wish to check the “order” of lawyers, that the laws may be executed upon the strictest principles of equity ; that the rich and the poor may ever be on an equality, while they are appealing to the justice of their country.

Some persons may think that I pay too little regard to the study of the law ; so far from this, no person has a greater idea of the importance of this branch of science. The fundamental principles of our laws, I hold “necessary” to be known in our republic ; but I conceive the “order” of lawyers (as they now practice in our Courts) is no way essential to this knowledge. Our Judges come fully within my idea to answer this purpose, and a little attention will prove my remarks to be just ; a lawyer takes up a cause solely for the profit ; consequently he must have recourse in many cases to sophistry and “cunning.” The Judges have their fixed salaries consequently they have no inducement to be led from the fair principles of law : could a Jurymen hesitate a moment to determine, as to the justness of these persons’ sentiments ?

It is worthy of notice, that the judges in delivering the evidence to the jury, are seldom heard to mention any observation or point of law, delivered by the lawyers of either side ; and the jury when they retire, as seldom have any reference to the pleadings of the lawyers : the evidence as delivered by the judges is principally attended to, and all previous debates of lawyers are considered as time spent to little purpose.



I am sensible what reply will be made, "If we abolish the 'order' of lawyers, from whence are to come our Judges?" I answer, the fundamental principles of our laws may be known without establishing an "order" who become hacknied in every quibble to puzzle and perplex; we may as well say that we can have no merchants, without first introducing an "order" of stock-jobbers; the fair principles of commerce are known, without all the finesse, "cunning," and craft of the exchange-alley.

My principles are, to make the study of the law respectable and beneficial. For this purpose we should introduce the study at our University; a Professor of Law should be established, and the youth should be early taught the fundamental principles of our laws; and from this knowledge (with small attention) they would become qualified to take the important station of Judges.

It is said, "that the judges stand in need of the advice of the lawyers, as from the multiplicity of causes within their cognizance, they could not attend particularly to them, unless assisted by this 'order.'" To which I answer, that if the decisions by references were binding, we should not have so great a number of cases before the Judges, as this mode would keep out of our Courts the greatest part of our actions. The Judges, therefore, would be better able to attend the business than they are at present, as the vast variety of cases now before them, must be attended with delay and indecision. I dare appeal to those who are conversant in Courts, whether nineteen cases in twenty could not be decided as equitably by referees, as by a tedious court process?

As the number of lawyers is so great throughout this State, there is danger of their becoming formidable as a combined body. There is no "order" among us, that can so easily render themselves powerful by an aristocratical influence; being so connected with each other in their practice, they may readily unite to establish any mode of judiciary process they may think proper, and under sanction of law, the vilest impositions may be practiced.

Suppose, for instance, (and I will not affirm that it has not already taken place) that the lawyers should meet every quarter, and correspond with their brethren throughout the State: that they should determine the business of every court by previous consultation, whether to close a cause at the next term, or defer it to another: that the determinations at their conventions should be minutely entered in their Bar-Book, and the whole business dealt out



in Court agreeably to their pre-determined resolutions. Suppose a Grand Secretary should be chosen, to keep a particular account of all proceedings, and each one should be sacredly bound to adhere to whatever was transacted at this meeting. Also, a Committee should be appointed to examine all candidates, who should adhere strictly to the rules of this convention. In a word, suppose this "order", at their quarterly meetings, should establish a perfect Star-Chamber jurisdiction, as to all Court proceedings.

Provided there is danger of such a combination, is it not time that the People should be guarded against it, by checking the "order?" If the inhabitants of this Commonwealth should become subject to such impositions, as previous agreements before their causes are brought to trial, have we not the greatest reason to apprehend the most pernicious perversion of every judiciary process? If this "order" should become allied by mutual correspondence through the State, might they not subvert every principle of law by their combination, and establish a perfect aristocratical influence through the Commonwealth? In short, what security have the people in the laws, while an "order" of men exist, who have it in their power to manage them, so as to answer their own particular purposes and emolument?

Further, if the individuals of this "order" are admitted into our Legislature to make laws, and at the same time can become so formidable by their professional attachments, is there not the greatest danger, that in a few years they will render themselves (as a combined body) absolute, both in the Legislative and Judicial branches?—What safety has the "majority of persons" as to their rights, liberties and property, when in the first instance the framing of our laws, are under the management of this "order"? This "order" therefore may, in time, exercise as unlimited authority as the Spanish inquisition.

As this "order" has taken a plea from the Constitution for their existence, I shall take one from the Bill of Rights for their restriction. An article in our Bill of Rights stands thus, "Every subject of the Commonwealth ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs, which he may receive in his person, property or character; he ought to obtain right and justice freely, and without being obliged to purchase it; completely and without denial; promptly and without delay; conformably to the laws." But, my countrymen, are our appeals to



the laws conformable to this article ? According to the present system, the people are deprived of this right ! instead of obtaining justice “freely,” “completely,” and “promptly,” we are subject to the grossest impositions, by extravagant demands ; our causes are carried through every tedious labyrinth ; and even, if an individual obtains his case, he must, as in many instances, give a great part of what he recovers, to a lawyer. It is true a Fee-table is established, but how is it treated ? Let the injured individuals of this State declare ! Look into our country towns, and we shall find thousands who can express, with every sentiment of indignation, the distresses they suffer by the impositions of this “order.” The counties of Hampshire and Worcester can loudly witness.—I will venture to affirm, there is no country in Europe (if the least pretensions to equity governs their conduct) where the expenses attending a lawsuit, are so enormous as in this State : The people cannot get the most trifling advice, without paying the most extravagant fees. The instances which I could mention are too numerous (at present) to recount : But the horrid and infamous modes of receiving a certain proportion of what is recovered, is a practice which no free government ought to suffer : For if the inhabitants of this Commonwealth are to purchase the security of their property, upon such terms, in a few years they will have but very little property to secure. A few lawsuits would convert the greatest part to the lawyers possession.

We are told, “that every man may now go, and plead his own cause ;” but according to the present mode of practice, this is an affront to our understanding. Has not this “order” established such rules among themselves, that if any man attempts to speak to his cause he would be perplexed in every particular ; it is true, every man has a right to speak to his own case, but this “order” has, in effect, destroyed this privilege, by certain modes of practice. To say, therefore, we have a right to plead our own causes, is insulting ; as we can never expect to exercise this right, without first regulating this “order.” When this is done, our mode of conduct will be plain and easy.

The importance assumed by this “order” is another matter worthy notice. How does the poor dependent client, follow the professionalist, (often times hat in hand,) while the gentleman of the “order” stalks on with a solemn importance, and scarcely deigns to answer his client as to the state of his cause !—“Gods ! where’s the worth that sets this ‘order’ up ?”



I am sensible the gentlemen of this "order" are displeased with my sentiments, but their approbation I never expected to obtain. Every thing but fair argument has been attempted to throw my remarks into contempt; and scurrility, abuse and forgery, have been adopted; but this low cunning I despise.

If the "order" or their friends have nothing better to offer, silence is their only weapon. As to the contemptible lying wretch, under the signature of *A Mechanic*, I shall not affront the public by noticing his remarks. If such are the advocates of the "order," they may exclaim, "Miserable comforters are ye all."

As the time approaches when this State, in their Legislative capacity, can take into consideration the important business urged in these papers, it is hoped that the principal towns will give a lead to the undertaking, by inserting in their warrants, the design of instructing their Representatives on the subject. If any good takes place from my feeble attempts, my wishes and intentions will be answered. I have no favours to ask of the public; my sentiments I mean should stand or fall, agreeably to the determinations of my countrymen. But if the people of this Commonwealth are content in their present situation, and are willing, after all their struggles for freedom, to become slaves to the assuming dangerous power of this "order," the fatal consequences of their pussillanimity, will only be lamented by

HONESTUS.

*April 20, 1786.*

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No. VI.

"Bar Ruin with a laugh upon his face!  
Treachery conceal'd in specious smiles of grace!"

**A**FTER my numerous opponents have gone through with their observations, I shall pursue my remarks with freedom; and being willing to disarm them of one capital argument, viz. Electioneering, I shall desist till this business is fully over.

I shall endeavour to scrape from the "dirt" which surrounds the performance of "Zenas," such sentiments as are worthy notice. This writer is undoubtedly sincere in one assertion, "That



he never assumed the quill with more reluctance than in the present instance."

The "twig of the branch" being tender, must be treated with delicacy. The "lawyer" writes coolly, but he is apt sometimes to take a "certainty for an uncertainty;" when this is the case, there is but little dependence on his judgment. The "Merchant" is gone away in a passion, but previously informs me there is room enough in the world for us both; hope, therefore, never to jostle against him. The Mechanic, he is——.

These writers may ransack the tombs of history; they may raise a numerous host of venerable sages; but, alas! when we apply these models to the practice of the present "order," how vast the disparagement! Might not the ghosts of these stern patriots address many of those who thus disturb their ashes, and profane their names, in the words of Hamlet, "Whence and what art thou?"

I doubt not in the course of my observations to prove, that the "order" of lawyers by their practice have become dangerous in our republic, and that unless this body is radically checked, will finally establish an absolute aristocratical jurisdiction. We wish to be under a "government of laws," and not a "government of men."

The laboured writings of the "Free Republican" in former papers, (who I am jealous is one of this "order") seem calculated to pave the way for this aristocratical system. This writer earnestly recommends the mode adopted by the Romans of the "Comitia Centuriata."—He says, "The richest class should have every thing at their disposal." "That we should seldom have occasion to go so low as the fourth class for a majority of votes;" and that "the people should be rarely called together, unless for matters of small moment." Are these sentiments calculated for a republican government? Rather have not the "people" the greatest reason to be alarmed, when such principles are publicly declared by any of this "order?" Provided this mode was adopted, what security have the "weak and poor," (which Zenas pretends to be so wonderfully concerned for,) against the impositions of the "wealthy" of this "order?"

The unbounded scurrility of many of my opponents is unmannerly and ungenerous; some of them have acquired an importance from their profession, after hammering at other occupations; in consequence thereof, they now assume an arrogance. As for



myself, I am willing to stand the test of their strictest scrutiny, being convinced, that my actions have ever been on such principles as to defy the shafts of my most malignant enemies. Their insinuations can never injure my character, shall therefore treat them with the contempt they merit. They must excuse my not replying in kind, being from education and acquaintance wholly ignorant of the language of billingsgate. The greatest reflection I should conceive on myself or family would be, to have it insinuated that my conduct, in any instance, run parallel with some who are very liberal in their abuse.

The subject is not taken up from "resentment," or from "electioneering" views, as many would insinuate. As was said in a former piece, I have no favour to ask of the public, having no other intentions than the real good of the community. I plead not for a dissolution of law, but for the restriction of an "order" who are perverting every principle to their own emolument. I appeal to the experience and "feelings" of my countrymen for the justness of my sentiments, and while their approbation is secured, my opponents have full liberty to pursue their malice; for they may rest assured their spite is but little regarded by

HONESTUS.

May 4, 1786.

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## No. VII.

*"Facts are Stubbon Things."*

THE multiplicity of opponents that surround me, make it difficult to select an antagonist; and to answer them separately, would be too tedious both for myself and the public. I shall, therefore, introduce the whole upon the stage, and exhibit them in one portrait.

The "Twig of the Branch" is pleasing in his manner, though not very forcible in his arguments; and I doubt not, with proper cultivation, he will flourish ere long in the garden of science, unless he is injured in his growth by the briars and thorns which so abundantly spring from the soil in which he is planted.

The "Lawyer," in the Centinel, writes with plausibility. The sentiments of the other writers, after divesting them of their su-



pernumerary appendages, are chiefly comprised in his performances.

"Zenas" deals largely in history, and from thence endeavours to prove the necessity of the "order" of lawyers. From his "steu boy" language, without doubt he has made the Belles Letters his particular study. He introduces the respectable character of "Demosthenes and Cicero," but the sound of names will not avail him in this controversy. I would ask, whether those sages lived upon the delay and embarrassments of the causes committed to their care? Did Cataline, as a conspirator, find a friend in Cicero? Did those orators become advocates for the enemies of their country? Did the "liberties of Rome" depend on a set of men in any manner analagous in their practice to the present "order" of lawyers? If "Zenas" cannot draw these inferences from his premises, his introducing those worthies upon the present occasion, is an affront to their memories.

The character given of Demosthenes is, "That in his pleading he thought of nothing but his country;" and of Cicero, "That he had the integrity both of witness and Judge." The principles laid down by Cicero and Quintilian, for the conduct of a lawyer, are worthy the attention of the present "order."

I was sensible when I first introduced the idea of checking the "order" of lawyers, that my sentiments would be opposed by this general observation, "That we ought not to condemn a whole profession for the misconduct of a few." But this argument would hold equally good with regard to any institution or mode of government whatever. For instance, it may be urged, "Will the people abolish a monarchy for the conduct of a few bad princes?" But in a republic we should with one voice declare, that this form of government was itself pernicious.

Every writer who has appeared on the subject, acknowledges, that those who have been guilty of mal conduct have brought a disgrace on the "order." The "Lawyer" also allows the "general practice" to be pernicious; if, therefore, these writers admit, that so far as bad practice takes place, so far the public censure is justifiable; if it can be proved that perverse practice has pervaded the whole body as an "order," it will justify my sentiments of a radical reform. It being evident, from the late practice, that the inhabitants of this Commonwealth are deprived, in most cases, of the advantages of the laws. The bills of cost which I could



here exhibit, would prove the truth of this observation ; but I forbear, as it might be thought by some to be pleading too forcibly to the "feelings" of the people.

I did not think it necessary to call the attention of my countrymen to the pernicious practice of individuals, as such partial evils would naturally remedy themselves ; but from the alarming strides of this body as an "order," I thought it full time to bring forward this important question, whether the "order" of lawyers was necessary in our republic?"

Do the people of this Commonwealth admit an "order" of men to be "necessary," who by their influence may render every appeal to the laws ruinous to those who employ them ?

I am aware of the answer that is made by the "Lawyer," let us retain the "order" but destroy the evil. I find the gentlemen of the bar are willing to join in this sentiment. But from experience we are certain, that unless a thorough check takes place, the evils we now complain of will unavoidably continue. The present laws of this State are intended to restrain their impositions ; but have they effected these essential purposes ? The fee-table is treated like an old almanack. They have so established certain rules amongst themselves, as a combined body, that the State may go on to regulate ; but the "order" will ever find means to augment their Court charges. Let a Committee of the General Court be chosen to examine the bills of costs in the Clerk's office ; they will then be able to find out the impositions which have crept in by perverse practice. We may think to remedy the evils ; but the poison lurks in the very vitals of the "order." For while our judicial causes are subject to the controul of a body, whose interest is repugnant to that of the people, we cannot adopt any measures to effect a radical cure. Possibly, for a few months, some trifling attention may be paid to our regulations ; but a few years will introduce every mischief we now groan under. Look around and view the numbers in this profession ! Do we suppose a moderate fee-table can support them ? If this "order" has already become an universal grievance, when, by their own account, there are but eighty practitioners in the State, what dangers may we apprehend when four times their present number shall be practising in every part of the Commonwealth ? Alas, my countrymen, if this "order" is absolutely necessary in our republic, then surely our destruction is unavoidable. For if we must be subject to their controul, weak



indeed is the barrier that defends our liberties and property from their grasp.

“It is from experience that we reason best.” Let experience declare what we have already suffered from their existence, notwithstanding the laws which are established to prevent their pernicious conduct. Do we suppose we can make ourselves more secure in future? Rather must not every patriot tremble for our political ark, when this State is obliged to acknowledge this “order” as “necessary” in our republic?

A necessary “order” implies an impossibility of doing without them. Let us then examine this hypothesis in such cases as are within every man’s cognizance.

In the first place, the amount of most prosecutions that arise amongst neighbours in the country towns, are from 6s to 10l. In the heat of the dispute, the persons apply for “council.” Even if the parties agree to leave their cases to reference, a lawyer is introduced to tell each man’s story. In this case, surely they are not necessary. But let us suppose this dispute is carried into Court. The lawyer sets out with his client to the shire town. To enable the “council” to pursue his journey with decency, he must have more money advanced him, as a fee than would pay his employer’s annual tax. The client also must have some ready cash to bear his expenses, which is the earnings of many months’ labour. The lawyer, when he arrives at Court, has so many other matters to arrange, that his client must “dance attendance” for many days before his case is brought forward. In the interim, the poor man has nothing else to do but to loiter away his time with a herd of people in the same unhappy predicament with himself, and possibly from idleness becomes subject to a thousand vicious practices, which, if he had kept at home, he would never have been exposed to. However, after waiting till his patience is wearied out, his case is at length brought forward for trial. One lawyer presents his charge, and the other prepares his vindication; while the poor plaintiff and defendant stand gaping at their honours. After going through the necessary preparations of reading, looking over papers, and calling over witnesses, the “council,” with a very solemn phiz, agree between themselves to defer this important decision to another term. The lawyers knowing that their clients must finally pay for every day’s attendance, are perfectly easy what expense accrues; and after they have wearied these unfortunate men



through as many Courts as their purses will bear, both lawyers will whisper to their clients, "Make up the matter upon the best terms you can." Here ends the farce, and here they are at issue. Pray, is the "order" necessary in this case? Was it impossible for three honest neighbours to settle the dispute, without all this expense, fatigue, and trouble?

I have, in the plainest terms, given a narration of those facts which take place every day in our country towns; and if we candidly examine, we shall find these observations will apply in almost every case, where we employ a lawyer. So far, therefore, from their being a necessary "order," they appear wholly useless, in the greatest part of our disputes; and to say that this body of men are absolutely necessary for the decision of our laws, when they are in every particular perplexing the most simple case, is absurd and inconsistent.

Is this "order" necessary in our mercantile concerns? A body of merchants are ever considered the most eligible to settle commercial disputes. Since the peace, have the mercantile body experienced the necessity of this body? Have they wanted them to throw the most simple demands into confusion? Or have they stood in need of them to replevin their property, and to render their commercial character despicable in Europe? Or do we conceive this "order" "necessary to regulate the customs of foreign nations and merchants?" I would ask those persons who maintain this "order" to be absolutely necessary, to point out the particular instances wherein they are so indispensable. Let them prove that the laws cannot be executed without their assistance.

I cannot apprehend, from a reform of this "order," that we should be in a state of anarchy, or that we should make our situation worse than it is at present. It is really preferable to be in confusion for want of law, than to be ruined with law; the former will soon be remedied, but the latter becomes more and more established. Legal impositions are the worst species of tyranny.

But, however, this "confusion," which is predicted by the "order," is all a bugbear; our laws might become so simplified, notwithstanding what has been said by the "Lawyer," that Judges might be found equal to the task of dispensing, upon the most equitable principles, justice and judgment. By the mode proposed, we should find every individual would receive a greater benefit from the laws, than by the intervention of this "order."



But it is by the "Lawyer" said, "How dangerous and powerful an union might these Judges form?" This argument is somewhat similar to that which is urged against giving powers to Congress! "What an unlimited influence would they acquire?" cries Jonathan of the valley. But this argument has no more force in one case, than in the other; as the Judges are chosen during good behaviour. When, therefore, they are found to pervert the laws, the people have a remedy by impeachment. As one writer observes, "The judiciary power is as secure as the nature of government will admit."

As this "undue influence of the Judges" is a great argument used by the advocates, and particularly by the "Lawyer," let us examine from which institution the most danger is apt to arise. In the first place, the Judges may have an undue influence; they may pervert the laws; they may receive bribes. We will admit these evils to take place; but the remedy is in the people! Remove them from their office, and the evils subside. But on the other side, suppose the lawyers should be guilty of these practices, wherein is our remedy? It will be said, controul them by certain regulations; make them take a most solemn oath, that they "will not do any falsehood, or consent to any to be done, &c.;" restrain them by a strict fee-table. But it is answered, these things are already done; notwithstanding which, every man "feels" the horrid effects of their practice. These laws and checks of government have no tendency to relieve us; they are disregarded by them. Their numbers have become so great, that the evils steal through the State, and the people become entangled in their snares, before they are aware. But the practice of the Judges is at one view, and when they are guilty of a breach of duty, the number being small, it is immediately felt, and we know the person on whom to lay our charge. Besides, being supported by "fixed and determinate salaries," they have not that inducement to pervert the laws, as men who are obliged to act for their clients, let their cause be good or bad. Notwithstanding the long continuance of the order of Judges, how seldom does our history furnish us with any impeachments for mal conduct? So far from any complaint against the present Bench, every individual is satisfied with their conduct. But is this the case with the "order" of lawyers? Certainly not.

Further, the continuance of this "order," establishes a perpetual power vastly superior to the Judges, who are, during good beha-



viour, over which the people have no controul. There being no rotation or choice of members, they will become an "order," continually increasing in influence, and by "long practice" will have their clients equally as dependant upon them as the wretched vassals under the feudal system, and in time they may become so involved in the very vitals of government, that it will be out of the power of the people to remove them. This "order" may, in a few years, establish such an ascendancy within the Commonwealth, that like the Plebians of Rome, the people will be obliged to chuse a "patron" from among them.

I am sensible, "that men professing the knowledge of the laws are necessary to every free government." But I am as fully convinced that the practice of the law ought not to be within the hands of an "order" of men who pervert them by their mal practice. The "knowledge of the law," and the pernicious practice, are two very different points. When a community, therefore, find any body of men becoming so powerful that the individuals of the society cannot appeal to the laws without being subject to their imposition, in this case, it is the duty of the community to abolish their continuance. The characters of Otis, Thacher, &c. are very respectable; but the practice then and since is so opposite in almost every instance, as to render the establishment very different in its nature and operation, and from an "useful," it has become a dangerous institution. So enormous has it become of late, that I can fairly argue "from its abuse, against the use of it." That this is fact, I do not appeal to "Justinian or Theodosius," but to the experience of every man within the State.

The "order" of Judges will answer every purpose, "as men professing the knowledge of the law;" and to allow generous salaries to gentlemen in this office, would ever be an inducement for many to turn their study to this profession. The difficulty held forth respecting the impossibility of getting good Judges without this "order" is only deception. For if none but this "order" are acquainted with the general principles of jurisprudence, it must follow that they only are competent to make laws. But on the contrary I argue, that if a body of men can frame laws, who do not make this profession their whole study, it follows that wise and honest men may judge on them, notwithstanding they are not hacknied in all the finesse, cunning and art practiced by this "order." The fundamental principles of right and wrong are level



with the common understanding of mankind. For if these principles are not known, without making them the whole study of a man's life, the trial by jury, which consists of twelve men taken indiscriminately from the people, is the greatest absurdity in nature ; for how can men determine upon any business with equity, if we allow in the first instance, that the subject is above their comprehension.

It appears rather a difficulty to the "Twig of the Branch" to know how we shall obtain "the different forms of conveyance requisite to secure the peaceable possession of property, provided this order were abolished." To which I answer, that the excessive intricacy of these conveyances arises principally from a multiplicity of needless and almost unintelligible words introduced into these forms ; every necessary security might be had, provided a more concise mode was adopted, so as to prevent "every contention, dispute, and outrage incident to verbal contracts."

Even now, amidst the multiplicity of mystical phrases, all necessary forms can be had independent of a lawyer.

I shall further consider in my next the plea so often urged, "That if we abolish the order of lawyers, we cannot be furnished with Judges !"

I hope my countrymen will consider with candour the sentiments delivered. I mean to persue the subject, but whether any good effects shall take place from my remarks, depend on your determinations.

May 11, 1786.

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#### No. VIII.

*"The viciousness of a law-hacknied heart, is not easily conjectured. The brethren of the bar have a set of errors peculiarly their own ; They have great originality in their crimes ; and all are securely perpetrated under the mask of hypocritical equity."*

I HAVE hitherto endeavoured to treat my opponents with as much respect as decency would permit me ; I have overlooked many of their insinuations and personal abuses, knowing their intentions were to draw me aside from pursuing my subject ; but "Zenas" appears to be bread wholly in the school of vulgarism ; and though



he may assume the title of a gentleman, I dare venture to affirm, if he would reveal his name, we should find him of a most dispicable original. He says in his last, that "Honestus is a designing and dishonest man." In this assertion I look upon myself as interested.—If this writer had proved his charge from my writing, or had convinced the publick of the justness of his accusation, I should not have blamed him for his declaration ; but the contemptible wretch in the first place only deals in cant and declamation ; and though he forces himself upon the public by taking up four columns of a paper, he is so far from refuting my arguments, that he is entirely ignorant of the subject he pretends to vindicate. The trial by Jury, nor the privilege of Council, on which he is so very elaborate, have never been disputed in any one paragraph I have offered to the public ; neither have I urged "compulsory references." As to the gentleman whom he stiles "the stern, false-hearted, and ungreatful politician,"\* I should be happy could I boast of his assistance ; his character as a patriot stands too exalted to be injured by "Zenas ;" if any thing can sully his fame, it must be to vindicate his conduct from the aspersions of this paltry scribbler.

Having dismissed forever this ignorant "Zenas," I shall go on with my remarks, after asking pardon of the public for noticing so gross and illiberal a writer.

As many persons have received a wrong impression (notwithstanding my repeated declarations to the contrary) that my views are not only to abolish the "order" of lawyers, but to destroy the efficacy of the laws,—this being so contrary to my ideas, that my whole aim has been to establish the laws upon such a foundation, that every man should receive the full benefit of them ; or in other words, agreeable to our Bill of Rights, "freely without being obliged to purchase it ; compleatly and without denial ; promptly and without delay ; conformably to the laws." I wish therefore that this declaration may be remembered, that my opposition is not to the laws, but to the present practice and "order" of lawyers ; my plan, I presume, can be practised without weakening the laws, or setting property afloat.

I go on as was proposed to consider the question, "whether Judges well versed in the laws, could be procured after the abolition of the "order" of lawyers?" I have observed in a former paper, that the fundamental principles of our laws might be known, without the mode of practice introduced by the "order" of lawyers ;

\* Samuel Adams.



for if it be a fact, as one of my opponents asserts, "that the municipal institutions of this Commonwealth are so fixed and determinate, that it must be difficult for the judicial authority to trample on them with impunity;" if this be the case, even now, notwithstanding the vast and "venerable pile of British codes" introduced into our Courts, provided the laws were simplified, how much more "fixed and determinate" would they become? Thus systemised, could not persons of abilities, with proper attention, make themselves acquainted with every information essential to a Judge?

It is observed by the same writer, that "the want of uniformity and system, put it in the power of the Judge, in the republic of Athens, Sparta and Rome, of bending the laws to their pleasure:" but if the institutions of this State (as asserted by the writer) are "fixed and determinate," this "uniformity and system" are not wanting, as in "Athens," &c.—consequently the Judges of this State have not the "power of bending the laws to their pleasure." The conclusion therefore is, that the laws becoming "fixed and determinate," the fundamental principles might easily be acquired, so as to enable them to take the important stations of Judges; and that the "order" of lawyers who are puzzling and perplexing those institutions which are in their nature "fixed and determinate," are a useless and unnecessary body in our republic.

The "lawyer" (in the Centinel) seems averse to adopting a concise code of laws, but thinks it necessary to admit the body of British laws into our Courts. He says, "they are framed upon the principles of Magna Charta; and those which relate to the prince and nobility are never adopted." By his own acknowledgment, the laws by which we practice are involved amidst a multiplicity of others "we have nothing to do with." Would it not be a more eligible method to frame a code of laws upon the principles of our own Bill of Rights, and adapted to the particular circumstances of this State? That we may no longer be obliged to wade through folios from the "first Henry, and travel over numberless pages relating to the "prince and nobility," and "which are repugnant to our constitution, and as little regarded as the edicts of France." If therefore those introduced into our practice are involved in a thick cloud of useless British statutes, it is a full proof that those which are applicable to our constitution, should be selected and brought to one point of view. I would ask, why this State cannot have laws framed upon the principles of their Bill of Rights, equally as well



as England upon their Magna Charta?—But it is said, Magna Charta is agreeable to our republican government ; therefore British laws are consonant to our constitution. But according to this mode of reasoning, we might have adopted Magna Charta in the gross, and not have been at the trouble to form a Bill of Rights of our own. But I argue thus, as we have adopted a Bill of Rights, though consonant to the spirit of Magna Charta, so also we ought to frame a code of laws, though they may be agreeable to the republican laws practised in the Courts of England. Thus reduced as to bulk, if not in spirit, our laws would be adapted to every man's information, and most persons could spare some leisure moments to become acquainted with their general principles.—But as our laws, at present, are so involved with the whole body of British statutes, scarcely any person, even if he has an inclination to make the laws his study, can select from the chaos those which are necessary for his attention.

I thank the “lawyer” for his friendly intentions to inform me, “that the kingdoms of Media and Persia were under the government of absolute monarchs ;” but knowing this wonderful piece of history before, I only introduced those kingdoms to show the impropriety of our adopting British laws, as if we thought they were as “unalterable” as those of the Medes and Persians ; or that we conceived ourselves bound strictly to adhere to them, notwithstanding they were blended with thousands “repugnant to our republican constitution.”

But it is said by one writer, “our laws cannot be simplified, as a variety of laws are necessary in a free State, from the variety of views in which property is considered, for the payment of debts, raising a revenue, and the numberless rules necessary to the transferring property.” On which I do observe, that this “variety of views” is the slough of the law ; and the greatest part of those “views” arise merely from the sophistry introduced by lawyers ; for the more divisions, subdivisions, distinctions, and vague indefinite ideas that are introduced into any controversy, the better for them. In short, the whole bundle of perplexities originate from the metaphysical pleadings of this “order,” they being studious to show a cause in as many shades as fancy can picture it ; and very often the most simple cases are thrown into such a “variety of views,” as to become a jumble of intricacies. But the principal



part of this parade is mere pageantry of profession, calculated to perplex the Jury, and deceive the wondering crowd.

If there is such a mystery in right and wrong, we ought to have a body of lawyers for Jurymen, as they are the final deciders on this heap of wonders. Can any man seriously say, that five Judges cannot give every point of "view" in which property is considered? Have they not "abilities to discern the near approaching shades of guilt verging from excusable homicide to manslaughter and thence to murder?" Or could they not know, "the natural distinction observed in the definition of any crime or offence?"—Could they not know "what a writ of habeas corpus was, how enjoyed, or in what circumstances demanded?" I hope this writer does not mean to "banter" the Judges, as if they wanted information on these points. Could not a Jury take the right point of "view" from men who are under no bias to consider it but in one point, which is that of equity? But the Jury now become embarrassed in their ideas from lawyers who have an interest to make their own particular side appear the only right point of "view." I would ask, whether the Jury could not determine the truth with greater certainty from the explanation of the Judges, than from the sophistry of a dozen lawyers, who are only delivering their sentiments to persuade them to take a "view" through their optic glasses.

Further, if we were to examine all the cases since the declaration of Independence, I do not suppose we should find more than one in a thousand that required any material law question to be agitated; and even this one, it is more than probable, could have been decided without the assistance of the bar. The causes now in our Courts, and those which have occasioned so much distress among the people, are no way connected with any law question.—The common cases which are deferred from term to term, and which cost so much money in the prosecution, are in no respect intricacies of law. Our difficulties do not arise from such causes, but from the embarrassments of lawyers. The trifling litigious cases which in general are brought into our Courts, require no questions of law, but are nourished by a band of lawyers, merely to make money for themselves, from the purses of their clients. This "order" sometimes play upon the feelings of their townsmen, and so far from endeavouring to reconcile any differences, are willing to urge the resentment of one neighbour, to pursue with rigour another, by which means not only their property becomes a sacrifice, but pri-



vate bickerings and animosities pervade the whole town : we have hitherto submitted to their impositions, wrongly supposing them to be a necessary evil.

The "Lawyer" observes, "that decisions by references have been decisive, time immemorial, both in this country and England." But we know the decisions by references are not binding. Even if an obligation is given upon such an occasion, it would be set aside by the "order" as invalid.

The "Lawyer" says, "every man has now a right to plead his own cause ;" but every man knows, that while this "order" exists, the people are deprived of this right. The "Lawyer" says, "if a man conducted his suit with learning and propriety," he would be treated by the Bar with the greatest respect. The gentlemen of the Bar therefore are the judges of "learning and propriety : " and if a man who is interrogated with the utmost arrogance by the Lawyer, shews the least diffidence, it is considered as an "awkwardness," and a "foolish attempt to undertake a business he is totally unfit for." This is truly a novel sentiment, that a man who is telling his own story, and who must in the nature of things know more about it than any other person, should be "totally unfit" for the business. If he is not fit for the business, who can be ? can a Lawyer be more fit to tell the story, than the man himself ? pray how did the Lawyer receive his account, unless from the person ? But it will be said, "he cannot tell his story in open court." I readily acknowledge he cannot now, while we have a numerous "order" of men to laugh him out of countenance ; but if we disperse this herd from his presence, we should find that every man would tell his story with equal ease, as he now does to a lawyer, under the gloomy shades of his office.

The "Lawyer" says, "mirthful scenes naturally excite a mirthful countenance." For my own part I know not any "mirthful scenes" in our courts ! a man in distress exhibits no laughable scene ! possibly a lawyer who is living on his distress, may call it a "mirthful scene," when a poor unhappy client shows a little agitation in expressing himself, this may appear truly laughable to a lawyer. This "order" may take pleasure in the throbbing bosom of an unfortunate man, entangled in the web of the law ; but however "mirthful" this may appear to them, yet consider ye bold, unfeeling beings, that the object of your merriment, has his property, and possibly his life, depending on the issue ; and though you



can shroud yourselves in your formality, and can smile on his misfortunes, yet remember, this distressed man and his family are suffering the most poignant miseries, owing principally to that "order" against whom he is engaged.

The "Lawyer" finds fault with my plan, "that any man should speak for himself or by his friend." He reprobates this idea, and says, "we could not attend to this business ourselves, and as to a friend, no one would devote himself to serve another." A decision by rule of Court, is contrary to this sentiment. Thank heaven, we often experience the indulgence of our friends, to devote themselves to a settlement of a cause, after it has travelled for years, through every round of the law. These friends we do not call "pettifoggers," but real friends, in distress. They are not an "order" who are taking an advantage of our misfortunes. They are not an "order," who are pilfering our little remaining all. They are not growing rich by the delay of our cause. They are not taxing us with a heavy bill of costs. In a word, they are friends to "the widow and fatherless," the weak and poor; and instead of adding to their misfortunes, they endeavour to smooth the rugged paths of misery." Does the "Lawyer" call such persons "pettifoggers," or does he give our Judges such opprobrious epithets? I rather suppose a troublesome, cunning Attorney, comes more justly within this idea; one, who by long, unnecessary delays, will swell a bill of costs, and who pursues this business solely for his own private emolument.

My plan solely rests here, that a man who does not choose to give his plea in person, or writing, may employ a friend for this purpose, and that the Judges should take this account in its simple state, and deliver it to the jury, with any points of law necessary for the decision. This mode I call equity; and the determination of the jury would be more just, than a thousand "pettifoggers," employed to embarrass, delay and swell charges.

As to a man attending on his own business himself, this objection is quite trifling; as he is now obliged to attend every court, notwithstanding he employs a lawyer, and his expenses become augmented by supporting himself and his "Counsel," through a whole term.

Another sentiment is, "that lawyers must be considered as sentinels over the enemies of the law." This idea could be well applied to the Judges, but the simile is rather unfortunate as to the



order of lawyers: Would a prudent General place a man as a "sentinel," against whom the army were almost unanimously clamorous? Would a body of guards be placed on the out-posts, who by their conduct had ruined the army? who were taking the advantage of every soldier? who were suspected of holding an improper correspondence? who by their art and cunning were promoting a dissention among the troops, and were fomenting every little dispute? and who by this means had amassed to themselves the greatest part of the rations, clothing and pay of the soldiery? I ask, whether a General would show his prudence to place such a body as "sentinels," in a time of danger? Rather on the contrary, would it not prove his wisdom to arraign such an "order" at a Court Martial, and would it not be just to sentence them immediately to quit the camp?

Another sentiment advanced by the "Lawyer," is, "we deprive men of enterprise, from engaging in the study of the laws." I have ever conceived that principles of justice were necessary for a Judge, but the spirit of "enterprise" is quite a novel idea. It is true, the present "order" may come within this idea, but it appears perfectly absurd, that a Court of Justice should be governed by men of "enterprise;" the fair principles of law cannot be considered "enterprise," "champarty" possibly may be considered such! It may be called "enterprise" to take up a cause, and depend on its success, by endeavouring to puzzle and perplex it in every particular: but such conduct though it may be a pleasing speculation to the "order," is ruinous to the community. These speculating lawyers may increase their fortunes, and may by some successful causes live above their fellows, but if this enterprising conduct is pursued, Justice must ere long become most horribly perverted; and our courts become scenes of Exchange Alley jockeying.

One writer arrogantly asks me, "whether I can lift up my eyes to the supreme bench of justice." That elevated seat I revere equal with him; and so great is my respect, that I should hold the man in contempt, (if any was within my knowledge,) that would quit it, to take a stand at their Honours footstool.

The variety of objections offered by the advocates, must apologize for the length of my observations. In my next I shall go on to prove them a dangerous order. I shall therefore conclude this paper in the words of Æschines, in one of his orations; "In such



a situation of affairs of which you yourselves, my countrymen, are sensible, the only method of saving the wrecks of government, is, if I mistake not, to allow full liberty to accuse those who have invaded our laws. But if you shut them up, or suffer others to do this, I prophesy that you will fall insensibly, and that very soon, under a tyrannical power."

May 18, 1786.

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No. IX.

*A citizen naturally virtuous, possesses these two qualities : a steady and unshaken courage to support the Commonwealth ; and a zeal that has been proof against every thing, in every conjuncture, and particular action."*

THE parade in the Exchange Advertiser, and other papers, respecting the conduct of the town of Boston, on the business of instructing their representatives, and the insinuations thrown out, as if the inhabitants in general were opposed to the sentiments contained in these papers, prevent me (for the present) from pursuing the subject mentioned in my last, that I may take notice of those pompous recitals.

It seems a worthy citizen made a motion for a reconsideration of the vote passed at a previous meeting, viz. "not to instruct their Representatives ;" and mentioned particularly the consideration of the pernicious conduct in the practice of the law, by the "order" of lawyers. This motion was seconded, and after a very trifling debate it was put to vote, and there appeared but a very small number of hands in favour of a reconsideration. The narrator then concludes by saying, that "Honestus may console himself that he has a few "ignorant, ridiculous, phrensical beings," to join him in sentiments."

I would not pretend to reflect on the inhabitants of the town of Boston for their proceedings ; but from previous conduct I have the greatest reason to suppose that my sentiments were not so generally disapproved as this writer would represent. With respect to introducing the "order" of lawyers into our legislature, which was one main object held forth, there never was a time when the sentiments of the people could be more fully known on this point, than at the last election : as gentlemen of the most respect-



able characters met at several parts of the town previous to the choice, and though amongst the number of candidates, seven or eight persons of the "order" were nominated, yet a disapprobation was shewn to the whole, by an almost unanimous negative; one hundred and eight being present at one place, and the numbers were from three to twelve, for the "order."

I do not mention this to boast or to "banter" the gentlemen who were candidates, but to inform my countrymen of the minds of the people of this metropolis; and to convince them, that the reason of their "not" instructing their Representatives, was not owing to a disapprobation of the sentiments delivered in these papers.

I hope the narrator does not publish his vaunting paragraphs merely to insinuate to the publick, that the "order" of lawyers had so far established their influence in this metropolis, as to set the respectable inhabitants at defiance; or does he think the town will thank him, for treating a motion (regularly made by a worthy citizen) with so much insult and ridicule? As freemen, they all feel the privileges of a citizen; and when an individual is marked out as an object of ridicule, or as being "ignorant, ridiculous and phrensical," merely for making a motion, it touches too keenly the "feelings" of his brethren, to suffer so great an insult to pass unnoticed.

The reason why this motion was not passed, I shall not pretend to say, as every individual, without doubt, has a witness within himself, which fully convinces him of the real cause of his silence.

The inhabitants of the town of Boston have ever been opposed to all illegal measures. I need only revert to that period when the arbitrary edicts of Britain roused them to assemble! when our patriots, impressed with the dangers which threatened their country, harangued their listening townsmen! When each bosom beat high in opposition to tyranny; at this crisis did not their hearts glow within them? Was not every coward sentiment that could depress the soul quickly stifled? And did not every man (a few despicable wretches excepted) readily determine with one inflamed heart, to become his country's friend?

At this period, my countrymen, would it have soothed your virtuous resentment, or have hushed your just complaints, to have been told, that a newspaper account of danger was not to be regarded? That we ought to know the name, family, and connexion of a publick writer, in order to determine whether his sentiments



were worth attending to ; that we should place such implicit confidence in the abilities of our Representatives, as to render it needless to instruct them ? Would such arguments then, have lulled you into a supineness, to acquiesce in the wishes of your enemies ? Would the respectable inhabitants of Boston have suffered the contemptuous sneers of an "order" of men whose practice was thought ruinous to the public welfare ? Or would they have submitted to the galling taunts published in their papers, as if they were ready to crouch under the burthens of their manifold impositions ? Surely not ! but that spirit which first roused them, in opposition, would have urged them to pursue, till they had accomplished their righteous purposes.

I shall offer my sentiments with coolness, as I am convinced some "few" persons will blame me for my remarks ; but as I conceive the subject to be of the utmost importance, must beg the indulgence of the public, while I consider the arguments which were urged in opposition to the motion. I would not be thought to reflect on the gentlemen who spoke on the subject, as I believe them to be sincere friends to their country. If they were wrong, it must be considered only as an error in judgment, as they could have no sinister views to mislead them.

The first observation is, "A newspaper writer was not to be heeded ;" or in other words, that the sentiments delivered in our papers were so little regarded, as scarcely to be worthy of notice. I am sensible we have some "few" amongst us, who heartily wish that newspaper accounts were much less regarded ; but when the people of this Commonwealth pay no attention to public alarms, we may soon expect they will give but little heed to any dangers whatever. In this case, an universal lethargy would soon take place.

Pray from whence arose our opposition to Britain ? Were not the sentiments delivered in our newspapers, the principal cause ? At that time an "order" of tories would willingly have hushed every whisper of a public speculation. From what source did the people get their political knowledge, but from this vehicle of information ? I am sensible it has, of late, become "monstrous" fashionable among a certain class, to speak contemptibly of public writings ; and to boast, with a haughty indifference, that they pay no attention to what appears in a newspaper ; and if by chance they hear of a writer, who is urging an attention to first principles,



they will exclaim with a heavy sigh, "Peace, be still." And if they find their pitiful moanings will not answer their purposes, they will endeavour to undervalue whatever sentiments are delivered, by branding them with the cant phrases of "popularity," "electioneering," "ungrammatical," "inconsistency," "phrensi-  
 cial," and many other epithets of as little import. But if they should deign to write in reply, their flimsy arguments are to be considered as carrying indubitable conviction. Their composition, the standard of diction. And though every line of their writings should be evidently wanting in both, yet such is their arrogance, they will censure every one that differs from their prejudicial opinions. But, however such persons may be affected, I hope the people will ever remember, that when this barrier of their liberties, the public prints, shall sink into disrepute, their freedom will speedily crumble from its basis.

The second objection is, "That we ought to know the name, family, and connexions of a public writer." With respect to myself, I am willing to stand the strictest scrutiny; but, however, this principle is perfectly aristocratical. Do "names, families, and connexion" alone, give force to sentiments? Must our opinions become valid, merely from high sounding dignities? Must the poor man be forever debarred from delivering his mind, lest the inquiry should be concerning his origin. Are there no observations worthy our attention, unless they are authorized by family alliances? Cannot the poor man have sentiments, that may be beneficial to his country? Must not the people listen to the voice of danger, unless it is proclaimed through the gilded trumpet of fame? Shall the grand inquiry be, who is the man, rather than what are the principles? Sorry I am that such doctrines should be attended to in a republican assembly.

The third remark is, "That we should place such confidence in the abilities of our Representatives, as to render it needless to instruct them." I greatly esteem the worthy gentlemen who are chosen by the town of Boston, for their wisdom, firmness and patriotism; but I reprobate the idea of relying so fully upon their abilities, as "not" to instruct them. This is a most pernicious sentiment. It is the grand prerogative of the people to instruct their Representatives; but if we introduce the idea, that we ought to place implicit confidence in their integrity and abilities, it is in effect destroying the right of instructing them. If we act upon



this principle, we can never exercise this right, for if we confide entirely on them this year, why not the next, and so on forever? If we would wish to instruct them in future, it will become a matter of so much delicacy from long disuse, as to be considered an affront, for their constituents to instruct them in any case whatever. Or they may quere with the utmost propriety, why do you distrust our abilities, more than our predecessors? Upon these principles, therefore, I am for tenaciously adhering to this right, and surely it cannot be any reflection upon the wisdom of our Representatives, to let them know, how we would have them act upon any particular subject; for if they do not know the minds of their constituents, it is quite a chance whether they please them or not. I would ask, whether there is not the greatest occasion for instructions the present year, as it is very probable, the greatest national concerns will come before the Legislature? Also, if the practice introduced into our Judicial Courts is an evil, surely no measure can be more eligible than for the people to apply to the Legislature for redress; if, after a thorough investigation of the subject, our fears should appear groundless, we shall then become satisfied with the conduct of the "order," and every undue resentment would subside. But, on the contrary, if they should appear well founded, we shall obtain in a legal manner, every relief. Certainly this must be agreeable to the "order" themselves.

It has become absolutely necessary, that the "majority of persons" should be cautioned against acquiescing in the sentiment of placing implicit confidence in their Representatives. This is one grand principle which an aristocratical party would ever wish to inculcate. They will readily endeavour to persuade the people, that a few men know the things belonging to their political welfare much better than themselves. That it is folly for the bulk of the people to instruct men whom they have chosen to represent them. Their abilities will be held forth as competent to the task of adjusting all public measures; and in a few years it will become almost arrogance for the "majority of persons" to inquire any thing concerning government. The people may soon expect to be answered, rely on the abilities of your Representatives; or if a daring fellow should presume to ask a question in a newspaper, it would be publicly demanded, what is "his name, family or connexions," and if it appears he is of the "fourth class," he will be silenced as an incendiary. Provided we suffer these principles too



far to prevail, the "majority of the people," will in fact "be called together only on matters of small moment." When this mode of the "Comitia Centuriata" becomes fully established, farewell every shadow of republicanism ! The "few" will govern, while the "majority" must become subservient.

These observations may appear groundless ! They may be considered as the mere effusions of fancy ; but however singular they may be thought by the "order," I dare hazard my conjectures, that (unless checked by the people) a few years will introduce so perfect an aristocratical influence, as will finally sap the foundation of our republic.

As several towns have given instructions on the important subject of restricting, and if found necessary of abolishing the present "order" of lawyers, it is not doubted but the consideration of our numberless grievances will come before the legislature at the next meeting. It is then presumed, that the variety of sentiments which now prevail will be brought into one point of view, and from the whole, some mode will be adopted effectually to remove the evils we now suffer ; and that such restraints will be laid, as to put it out of the power of the "order" to impose any longer on the people.

Some individuals make a laugh at our attempts to regulate the practice ; but we doubt not the business will be treated seriously, when it comes before that august body, from whence the people have a right to expect a redress of their grievances. For any persons, therefore, to assert that we cannot obtain relief from the Legislature is not only alarming, but perfectly paradoxical ; as the power which frames the laws must in its nature be competent to regulate all orders in the execution or practice of them. The happiness of the people is the sole object of all laws in a free government, consequently if their prosecution is ruinous to the community by the mal practice of any "order," it behoves the Legislature to remedy the evils, and immediately to devise some measures whereby the laws may be executed with equity and decision.

*May 25, 1786.*



## No. X.

By heavens, I had rather coin my heart,  
 And drop my blood for drachms, than to wring  
 From the hard hands of Peasants, their small trash,  
 When I've no right to.—SHAKESPEARE.

THE number of papers which have appeared under one signature, and upon one subject, I hope will not be considered by my countrymen as tedious or unimportant. If any consideration is worthy our attention, surely that must be whereon depends the happiness and welfare of our young republic. The laws are the barriers of freedom, and when they are perverted, the liberties of the people are in danger of falling a sacrifice to the innovation. These observations being premised, I shall pursue my remarks with confidence, not doubting they will be perused with candour by every member of the Commonwealth.

I beg leave to introduce to the public the oath taken by an Attorney, previous to his being admitted into the practice of the law, viz.

“You shall do no falsehood, nor consent to any to be done in Court; and if you know of any to be done, you shall give knowledge thereof to the Justices of the Court, or some of them, that it may be reformed. You shall not wittingly or willingly prosecute, sue or procure to be sued, any false or unlawful suit, nor give aid or consent to the same. You shall delay no man for lucre or malice; but shall use yourself in the office of an Attorney, within the Court, according to the best of your knowledge and discretion, and with all good fidelity, as well to the Court as to your clients. So help you God.”

The bare recital of this oath, without any comment, is sufficient to convince every one of the horrid perversion of the “general practice.” The writers on the side of the “order” have repeatedly called upon me to point out the particular persons who have been guilty of mal-practice; at the same time they have all candidly acknowledged, that some individuals within their knowledge have been justly censured. The “Lawyer,” in particular, admits the “general practice” to be unjustifiable. If this is fact, I now



demand of them whether they have, conformably to their oaths, "given knowledge to the Justices of the Court," or have impeached any of their "order," notwithstanding they are acquainted with their pernicious practice? If the "order" do think themselves injured by my observations, let them now convince the public that they mean to adhere to their oaths, by bringing those culprits to condign punishment. This palpable neglect therefore proves, that however innocent the persons themselves may be, yet they are blameable for not adhering more sacredly to their obligations.

An act of this State provides, "That the parties shall employ two Attornies only, to the intent that the other should have the advantage of one at least." How does the practice of employing or retaining a great majority of the bar, by hush-money, correspond with this act? It is true "two Attornies only" are admitted to speak to any cause; yet this retaining fee may deprive the other party of every benefit from "Counsel." By this practice a rich man will ever have the advantage of a poor antagonist; as the former may bribe two lawyers for pleading, so also he can fee half a dozen more to say nothing—but "laugh." These are among the scenes of "merriment" hinted at by the "Lawyer."

Another act of this State authorizes "the Supreme Judicial Court with respect to the admission of attornies, and the creating barristers at law, and establishing rules and regulations." But the "order" have now in a great measure got this power within their own hands; at their bar-meetings no candidate is admitted without passing their examination, and sometimes the person is exposed to their malice, pique, and resentment. These censors have a wonderful effect towards establishing the importance of the bar. It is surprising to hear a man defy me to produce an instance "when the fee-table has not been the rule of conduct with an attorney." Pray what is the aggregate amount of a bill of cost?—Possibly this confident boaster has not the presumption to charge in open defiance of the fee-table; but let him hand to the public the sum-total of his accounts, and I dare warrant, unless he is callous to every feeling, he would blush at the enormity of his impositions. This Jesuitical manner of reasoning, therefore, will not answer.

How extensive must be the influence, and how great the danger of an "order" of men who are thus perverting the laws in numberless instances, and practising in our Judicial Courts as a combined body? The charges alledged against them of their bar-meetings,



and their correspondence, are too notorious to be controverted; and provided they would favour the publick with their whole proceedings (those in particular which are not entered into the bar-book) we might then judge whether the existence of the "order" was dangerous or not. Can any institution be more alarming in a republick, than an "order" of men who have it in their power to pervert the laws, by pernicious combinations in every judiciary process? What security have the people either of their liberties or property, when all their appeals to the laws are first canvassed (unknown to the parties) by the very body of men whom they employ as counsel in their causes, and who oft times agree beforehand as to their issue when brought into Court? By such conduct, is not justice become a mere deception, and intended only as a cloak for every species of law-craft? And are not our laws rendered by such practice a mere ignis fatuus to delude the people? If this "order" can combine to delay and embarrass any causes they think proper, it is not in effect as fatal to the welfare of the community, as if we were without any laws whatever? How can we boast of our liberties, or be safe in our property, when they hang on such a precarious tenure?

Suppose A. commences an action against B.—when the parties apply separately to their lawyers, it is with a view to have the business settled upon the best terms possible; but if these two attornies instead of minding the interest of their employers, meet to settle the business to their own private emolument, by delaying the decision from term to term, can the parties by such conduct, be said to obtain the law agreeable to our Bill of Rights, "freely, completely and promptly?"

May not the most dangerous consequences take place, not only to every individual, but to the State in general, by such a combination? Is there not danger that this "order" will in time become so powerful in all our judiciary proceedings, as to rise superior to the controul of the people? And though the "majority of persons" throughout the Commonwealth may be sensible of their impositions, yet from the influence they may acquire from their practice, they will be afraid to oppose them. Does not this dread already prevail throughout many of our considerable towns?

Further by this combination, they may impose whatever taxes they please on the people! How easy is it for them to adopt certain modes of practice, which may become so far established as to render it impossible to remove them. They have already adopted the



measure of obliging every client to give his lawyer a power of attorney to appear in his behalf, for which he charges his client three shillings. This is an imposition which has lately crept into the practice, and which the people have imprudently submitted to from the smallness of the sum ; but however trifling it may appear to the individual, it rises a large amount to the " order," and serves to establish a most fatal precedent. It was a tax but little more than this, that roused the immortal Hamden to oppose the arbitrary proceedings of star chamber tyranny.

Our opposition to Great Britain did not arise from the enormity of the demand, but we disputed their right to tax us ! If therefore we admit the right of the " order" in this instance, how are we to check them whenever they may think fit to exercise it ? If they are called to tax the people with the small sum of 3*s.* what is to hinder their combining to raise the price of this power to 12*s.* or 12*l.* ? Or what security have we that they will not introduce many other illegal charges, and plead this as a precedent ? Suppose they were all to combine to take a certain proportion of whatever was recovered by their clients ? Or should engage to undertake no cause without such a part of a man's whole property ? In this case, wherein is our remedy ? If we permit them to combine for one imposition, how are we to stop them from prosecuting another ? If we allow they are a " necessary order," or that we cannot do without them, how can we ever check them, provided they would persist in their arbitrary and unlawful measures ? For if they are absolutely necessary, there is no dispensing with their power, let them act as they please ; such is their disposition, if they once conceive themselves to be absolutely necessary, we may expect (from what has already taken place) that they will take every advantage of our acknowledgment.

The " order" have often made this boast, " that they can do whatever they please in our government." Is it not alarming to hear an " order" whose practice is universally complained of, declaring publicly, "that they are not afraid of a restriction, and that it is out of the power of all men to do it." If this is our real state, melancholy indeed is our situation ! What ! are we threatened with a total abolition of our liberties, without even the possibility of remedy ? A free government thus hampered, is truly a political solescism.

Another evil is, their charging all their clients for a whole term 1*s.* 6*d.* per day, although their actions are deferred to another Court !



What an amazing income must arise to the "order" by this practice, even if they had no other fees?

The art and the cunning of the "order" are observable in the bills presented to their clients, as they are made out in the gross, and they refuse to give a particular detail of every charge; by this method, the fee-table is rendered useless. The Clerk of the Court will often refer a person to the lawyer employed in the cause, in order to give the attorney an opportunity of making a large profit on the regulated charges.

These are among the many impositions that have crept in by the combination of this "order" and their bar-meetings are intended solely to introduce by degrees the most destructive and arbitrary practice, by establishing certain modes and regulations, which operate as taxes on the people.

I shall here exhibit one bill of costs as a specimen of their charges, and which will fully prove that we cannot appeal to the laws with safety, owing to the impositions practised.

The action was brought by the plaintiff A. B. against C. D. the defendant, for the sum of

	£52 10
Judgment of Court in favor of the plaintiff,	21

Saved by the defendant, agreeable to the verdict	£31 10
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The defendant has to pay the verdict	£21
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Costs of Court, as taxed	24 5 10
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Jury fees in Supreme Court	2
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Defendant's council	15
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Witnesses on part of the defendant,	
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20 days, 1s6 per day	1 10
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	£63 15 10
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Original debt	52 10
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	£11 5 10
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So that the defendant pays, 11*l*, 5*s*, 10*d* more than the original debt, after being relieved by the Court of 31*l* 10*s*, more than three fifths of the debt sued for. Excellent law palliatives!

A late law-procedure, respecting a British debt, ought not to be passed over unnoticed. I do not pretend to charge any individual with mal-conduct; but as the transactions now stand in the view of the public, it is ruinous to us as a commercial people. Our



character, in this respect, has already become bad enough in Europe, owing to the imprudence of some individuals, by their excessive importations; also the great failure of our remittances, and other causes, have injured the credit of the American merchant; however, these circumstances are between the parties, as individuals. But when it is supposed that the laws of a country are not sufficient to protect a creditor in his legal demands, or the property attached is subject to be torn from him by violence; in this case the procedure is considered as national, and every individual in the community suffers in his reputation. These proceedings must be particularly disadvantageous to us at this crisis; as we now have an Ambassador in England, who is endeavouring to settle a commercial treaty, therefore every reflection on our mercantile character should be cautiously guarded against, and immediately removed. It is, therefore, become the duty of the merchant to inquire into this transaction, and to prevent, if possible, a lawful creditor, of any country, from being exposed to the impositions of any order of men whatever. If, after inquiry, it should appear that no undue measures were prosecuted, it is but just that it should be known to the public, that no individual should suffer in his character while innocent; but if, upon examination, it should be evident that the greatest impositions were practised, it is equally as obligatory upon the mercantile body to reveal the whole process, and by some resolves publicly to bear their testimony against the procedure. I urge this for two reasons, first, that as the transaction is represented in Europe unfavourable to our commercial reputation, the inquiry would give an opportunity to vindicate the measure if justifiable; and second, that the innocent may not suffer by any ill-natured reflections. No person, therefore, can censure my urging this candid inquiry.

I would not presume to dictate to the Honourable Legislature, but would with submission inquire, whether it is not in their power so to regulate the practice in our Judicial Courts, that the people may be able to appeal to the laws of their country with safety and confidence, and no longer be subject to the impositions they now experience from the "order" of lawyers? Some measures, it is presumed, can be devised to render our processes more easy and less expensive. Many of our Judicial and Executive departments call loudly on the Legislature for some effectual regulations.

I have endeavoured to bring our grievances into one point of view; and as our complaints have now become general, it is



earnestly requested, that the remarks in this and former papers, on the practice of the law, may be considered by the present Assembly, and that some mode be adopted to remedy our evils and silence every complaint.

The questions now to be determined are simply these, whether the people of this Commonwealth shall be exposed to the impositions of an "order" of men, who are practising every art in their profession to enrich themselves, and who, by their "general practice," are embarrassing the causes committed to their care? Or, whether some measures shall be adopted, that the people may have every privilege which they are entitled to by the eleventh article of their Bill of Rights? If the essential purpose of the last quere can be effected without controuling the "order," it is well! but, if not, as freemen, we cannot long hesitate whether we will sacrifice our liberties, or radically check them.

Before I conclude, I would observe on two arguments, which are held forth by the "order," first, That the delay of causes is an advantage to the debtor! This is plausible reasoning at first view, but how reverse the reality? Suppose a cause is delayed for a number of years, do not the charges become enormous when judgment takes place? The poor debtor pays most extravagantly for this respite; as the debt is daily increasing as it travels through the Courts, and finally the unhappy man falls a prey to a heavy bill of cost. The lawyers on both sides, during the whole term of delay, are swelling the charges of plaintiff and defendant. The lenient "counsel" on the part of the creditor knows that he is putting the original debt to an extravagant interest, (more possibly than a hoary usurer) and after ascertaining how far the property of the debtor can hold out, these sympathizing gentlemen have only to determine between themselves, to continue the cause just so far as will about balance the accounts of both debtor and creditor. This is the effect of law equity! In this case, "are not their tender mercies cruelties?"

The second argument is, "That by the constitution we cannot abolish the "order." The idea of an abolition is supposed by some to be nothing short of an insurrection of the people, as if we were to rouse in a mob, and turn every lawyer from his residence! we have a "few" amongst us, who would thus represent the reform recommended; these are bugbears thrown out by our aristocratic gentry; but this anarchy is foreign from my idea of an abolition. Order and government are objects which I have ever attend-



ed to throughout all my observations. The only measure I conceive necessary for the purpose of an abolition of the present practice, is to adopt such regulations, and introduce such modes as will render the "order" beneficial to the community, rather than injurious ; at least so far useful, as will comport with the happiness of the people ; or in other words, that "they use themselves in all good fidelity in their practice," agreeably to the oath administered them.

The privilege of Counsel does not imply that we should continue an "order" of men, in their pernicious practice, who are daily acquiring an undue influence in our Republic. This "Counsel" should be so regulated in their practice, as to put it out of their power to distress those who are entitled to every blessing of the constitution. It follows therefore that measures should be adopted by the Legislature, (provided people will employ Counsel, rather than make their pleas in writing or in person,) as will secure our constitutional privileges ; this might be done by allowing a small established fee, to be paid by the state, or by the individuals, and such Counsel should swear he received no farther recompense from the parties, either directly or indirectly : If this method did not abolish the "order," it would effectually abolish the present practice, which is tantamount.

I shall now dismiss the subject, leaving the consideration of my observations, to our political fathers. If any good consequences take place from my remarks, I shall think my time has been usefully spent. I have no sinister views to promote, but have studied solely the welfare of my country. The malice of my enemies I disregard ; they have full liberty to convince the public of the wretchedness of their cause, by adopting ribaldry and low cunning, instead of reason and fair argument. The personal abuse they have offered, does no way affect me, otherwise than it adds to the contempt I have ever entertained of them. I have always declared that I esteem many gentlemen of the profession, but the influence of the bad, will ever overbalance the wishes of the good. Provided I receive the approbation of the honest, virtuous and patriotic, I shall never concern myself about persons of an opposite character.

"To virtue only, and its Friend, a Friend,  
The world beside may murmur or commend ;  
Know all the distant din this world can keep,  
Rolls o'er my grotto, and but sooths my sleep."

June 1, 1786.

HONESTUS.



# PREFATORY ADDRESS

TO CANDID READERS.

NEVER BEFORE PUBLISHED.

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What solid Joy is it, for a virtuous man, in the practice of the law, to think he has received a talent from God which makes him the sanctuary of the unfortunate, the protector of justice, and enables him to defend the lives, fortunes, and honour of his countrymen.—ROLLIN.

**T**HE republication of the forgoing numbers “On the Pernicious Practice of the Law,” is not intended to excite either a political, or personal controversy. They are now offered to the candid consideration of the public, merely to gratify the curiosity of many respectable citizens, who are desirous to peruse writings which, for so many years, have retained a peculiar celebrity. The circumstances under which they at first appeared, are different from what they are at present. The author flatters himself, that the practice within the bar, has become more congenial to the happiness of society; and under this impression, acknowledges the utility of the profession, when conducted upon those honorary principles which give lustre to science. He is only desirous to place the “order” in that rank of society, which the most respectable and learned men, of all ages, have been zealous to consider them. The study of the law is highly honourable. It is a science, on which the permanent interest of the community essentially depends. Without an accurate knowledge of our legitimate rights, we are destitute of those barriers, which protect the virtuous from the rapacity of the vicious. In the impartial distribution of justice, the poor and rich stand on an equality; and, in a republican government, the rights of the citizens are founded on one uniform system of jurisprudence. No local partialities are admitted within the system. But while we advocate such liberal sentiments, it is necessary, that the most sal-



utary objects should not be converted to the most injurious purposes. At the period when the foregoing numbers appeared in the public papers, certain practices were prevalent, which called for some caustic animadversions to check their progress. The author was then led to extend his remarks to many instances of mal practice. The illiberal replies to his observations, naturally produced a severity on his part to stop their insolence. Being attacked with a phalanx of veteran assailants, he was urged in self-defence to exercise the full energy of his vindication. If, therefore, in the foregoing numbers, some retorts should appear pungent, yet an apology is readily offered from the peculiar circumstances, under which the author was obliged to rebut his antagonists. From these remarks, however, he does not consider himself as making a relinquishment of his original sentiments. He still maintains the ground he then occupied, and is free to declare, that *if the same impositions, within the bar, are now continued, as were practised by some at the period when the foregoing numbers were written, that the same mode of legislative procedure ought to be adopted as was then recommended.* But he candidly hopes, that the gentlemen of the profession have become more liberal in their practice. That the client is not *now* exposed to unreasonable delays, and illegal charges. That the citizens of *all classes* can appeal to the laws with a full assurance, that law and justice are synonymous. That every member of the community *now* finds a remedy for his grievance, without suffering more from the man whom he styles his "*Counsel*," than from the person against whom he complains.

The author is willing to admit every honourable plea, in behalf of the *gentlemen* initiated within the bar. He has no enmity to the profession, and takes this opportunity to acknowledge his high respect to many of this fraternity.

Upon the above acknowledgment, the author is desirous to declare, that though an annihilation of the "order" is frequently mentioned in the foregoing numbers, yet it was not the object contemplated even at the time they were published. He would, therefore, request in perusing the present edition, that the word *regulation* should be substituted in the place of "ANNIHILATION."

The author means to say in general, that he estimates the honourable practitioner, but cannot feel a cordiality for the crafty pettifogger. The beautiful portrait drawn by Quintilian of the character of a Lawyer comes fully within his idea of the dignity attached to



the profession.—He lays it down as a fundamental principle, “that eloquence should not be separated from *integrity*, without this, *eloquence*, which is the most beautiful gift, that nature can bestow on man, and by which she has distinguished him in a particular manner from other living creatures, would prove a fatal present to him.—If it is used to oppress innocence, and pervert truth, it is a weapon of the most destructive nature.—Justice and truth only have a right to the assistance of his voice, guilt has no title to it.”

It has often been observed, that the author has been opposed to the JUDICIARY.—On the contrary, he venerates the *bench of Judges*, and there cannot be produced one sentence in the foregoing pages which speaks disrespectfully of them. Not but Judges in their *individual capacity* may sometimes maintain improper principles, and are subject to a *critical examination* of the *opinions* they advance, and the CHARGES they give—but as a *constituted branch* of the government, they are entitled to every honorable mark of respect and veneration. The author had no other object in the foregoing numbers, than to distinguish, *between the pernicious practice of certain individuals within the Bar, and the purity which ought to constitute a Court of Justice*—He has strictly followed the sacred Doctrines of QUINTILIAN on the Duties of a Lawyer, and he defies any man to show a sentiment in the foregoing numbers, which does not correspond with the rules laid down by that learned and philanthropic Civilian.

He is still further honored by the full approbation of Washington, in the System which he proposes, and while he can plead such *authorities*, how futile must be the attempt to depreciate the reputation of the author, or invalidate the rectitude of his principles.—For if HONESTUS is wrong, Quintilian and Washington are equally erroneous.

Many alterations were contemplated to be made in this edition, but as they would have essentially broke in upon the general reasoning on the various subjects, it was thought proper to give the *original publication* entire, and leave the *candid citizen* to qualify the *severity of the remarks*, by considering (in all cases to which they are knowing) the happy reverse of the *present practice*. Relying on the liberality of all classes of readers (not excepting the *gentlemen* of the Bar) he is willing to submit his sentiments to their candid perusal.

THE END.



